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100TH CONGRESS
2d Session

SENATE

REPORT
100-500

MISCELLANEOUS INTERNATIONAL AFFAIRS AUTHORIZATIONS ACT OF 1988

SEPTEMBER 7, 1988.—Ordered to be printed

Mr. PELL, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S. 2757]

The Committee on Foreign Relations, having under consideration an original bill to amend the Foreign Assistance Act of 1961 with respect to the activities of the Overseas Private Investment Corporation, to make supplemental authorizations of appropriations for the Board for International Broadcasting, to prevent the abuse of diplomatic immunity, for other purposes, reports favorably thereon and recommends that the bill do pass.

PURPOSE

The principal purpose of the Miscellaneous International Affairs Authorization Act of 1988 is to renew and extend the authority of the Overseas Private Investment Corporation (OPIC) to issue investment insurance and guarantees and to make certain changes in existing programs and policies. In addition, the legislation contains a supplemental authorization of appropriations for the Board for International Broadcasting; extends the current terms and conditions of the au pair program—a cultural exchange program sponsored by the United States Information Agency; permanently repeals certain provisions of the McCarran Walter Immigration Act; and amends existing law to include provisions to prevent abuse of diplomatic immunity status by diplomats.

MAJOR PROVISIONS

The major provisions of the Miscellaneous International Affairs Authorization Act of 1988 are as follows:

S383-4

TITLE I—OPIC

Extends OPIC's operating authority from September 30, 1988 to September 30, 1992;

Raises the aggregate ceiling of OPIC's investment guarantee authority from $750 million to $1.5 billion;

Adjusts for past inflation the country per capita income guidelines specified in the statute which (1) restrict OPIC from operating in very high income countries, and (2) delineate for OPIC the category of poorest countries where OPIC is directed to make special efforts to encourage investment;

Liberalizes the Direct Investment Fund (DIF) program to permit a portion of any DIF loan to be spent in the United States for the development or adaptation of U.S. technology, products, or services which may contribute to the economic and social development of less developed countries;

Creates a 4-year pilot program allowing OPIC to make equity investments in firms or entities so long as those investments (1) do not exceed 30 percent of total equity at the time of the purchase, and (2) do not exceed 75 percent of OPIC's contribution to the project. The legislation authorizes $10 million from OPIC's income and revenues to be transferred to a fund for this purpose. These investments may only be made in eligible countries in sub-Saharan Africa and the Caribbean Basin;

Deletes the entire facultative reinsurance program (sec. 234A) and replaces it with a program to promote the development of the private political risk insurance industry in the United States; and

Eliminates Romania from the list of countries in which OPIC may operate.

TITLE II—BOARD FOR INTERNATIONAL BROADCASTING

Removes the earmarks on the Board for International Broadcasting's operating budget which set aside $12 million in both fiscal years 1988 and 1989 for the completion of the modernization program of Radio Free Europe/Radio Liberty stipulated in Public Law 100-204;

Provides an authorization of $24 million to complete the modernization program; and

Authorizes appropriations of such sums as may be necessary to the Board for the costs associated with the construction of a new relay station in Israel.

TITLE III—AU PAIR PROVISION

Mandates the continuation of existing terms and conditions (without changes) of the current USIA cultural exchange program which sponsors visits for young men and women to work (at no cost to the taxpayers) as au pairs for 1 year in the United States.

TITLE IV—EXCLUSION OR DEPORTATION OF ALIENS

Permanently repeals provisions of the McCarran Walter Immigration Act which permit U.S. immigration authorities to exclude or deport aliens solely on grounds of their beliefs.

TITLE V—DIPLOMATIC IMMUNITY ABUSE PREVENTION ACT

Assures that foreign diplomats accused of violent crimes in the United States are prosecuted under applicable U.S. law or required to leave the United States permanently.

COMMITTEE ACTION

On January 26, 1988, Senator Pell introduced (by request) S. 2006—a bill to amend the Foreign Assistance Act of 1961 with respect to the activities of the Overseas Private Investment Corporation. The bill was referred to the Committee on Foreign Relations. On July 6, the committee held a hearing on the bill and received testimony from Craig Nalen, President of OPIC; Nancy Kingsbury, General Accounting Office; William Cunningham, AFL–CIO; and Sydney Covall, Clarion Enterprises, Inc.

On July 27, the committee reported by voice vote an original bill—the Miscellaneous International Affairs Authorizations Act of 1988 which includes a number of the provisions which were contained in S. 2006.

COMMITTEE COMMENTS

OPIC

During the course of consideration of the administration's legislation to expand OPIC's operating authority, the committee focused in particular on two issues which have been the focus of GAO studies over the last seveal years: the adequacy of OPIC's monitoring of its direct loan program and the effect of OPIC programs on American jobs and the U.S. trade balance. [See "Impact of Overseas Private Investment Corporation Activities on U.S. Employment," May 1987 and "Overseas Private Investment Corporation Efforts to Improve Management of Loans," May 1988]

With respect to OPIC's monitoring of its loan program, the committee took note of the fact that as of March 31, 1988, 40 percent of OPIC's 75 active loans, with a total value of $48 million, were in delinquent status. Delinquent principal totaled approximately $5.1 million; delinquent interest totaled $2.3 million. Although the committee recognizes, that as a development agency, OPIC cannot be expected to have the same repayment rate as a bank, the committee nonetheless views the outstanding interest and principal payments as a matter which OPIC should monitor carefully.

The committee applauds OPIC's adoption of recommendations taken in light of these arrearages, to improve the corporation's pre- and post-loan disbursal review procedures and urges OPIC to continue its efforts in these areas.

With regard to the other issue raised by GAO—the reporting of the employment and balance of trade impact of OPIC-financed activities, the committee is concerned that the current manner in which the corporation presents its data to Congress does not provide as clear a picture of the impact of these activities as possible. In particular, the committee believes that OPIC should make an effort to respond to GAO's additional recommendations with respect to disaggregating the direct and indirect employment and

trade effects of its projects in order to present a clearer picture of its activities to the Congress and the public.

DIPLOMATIC IMMUNITY ABUSE PREVENTION ACT

In recent years, a number of foreign diplomats have escaped arrest, prosecution, or incarceration for perpetration of violent crimes by virtue of the protection of diplomatic immunity. This situation has justifiably outraged the American public and caused Congress to reexamine the concept, and practice, of diplomatic immunity.

During the 100th Congress, several bills have been introduced in the Senate which would alter the privileges and immunities currently enjoyed by foreign diplomatic personnel. Senator Specter introduced S. 339, a bill to amend the Federal criminal code to make the use of firearms to commit a felony by foreign diplomats to the United States a Federal felony. Senator Helms introduced S. 1437, a bill to deny criminal immunity to certain members of the diplomatic corps for crimes of violence, drug trafficking, or reckless and drunk driving.

On August 5, 1987, the committee held a hearing on the subject of diplomatic immunity. Poignant stories from witnesses who were the victims of diplomatic crimes were heard as well as a discussion of legal questions surrounding diplomatic immunity.

To address these concerns, the committee bill includes a new title V, entitled the "Diplomatic Immunity Abuse Prevention Act".

While individual instances of criminal acts by diplomatic personnel are serious, especially to those Americans against whom the crimes are committed, the committee does not wish to overturn the traditions of diplomatic immunity and personal inviolability, but rather to assure that diplomats who abuse their privileges are prosecuted or forced to leave the country.

The underlying principles of diplomatic immunity and inviolability of the diplomat are over 2000 years old and have been part of international law and U.S. law since the beginning of the Republic. The rationale for diplomatic immunity—in the United States and abroad—is simple and basic: to assure that diplomatic representatives are able to carry out the official business of their governments without undue influence or interference from the host country. The committee emphasizes that title V does not infringe on the fundamental structure of diplomatic immunity concerning subjection of diplomatic and consular personnel to criminal jurisdiction or personal inviolability of diplomats.

The committee is equally concerned that diplomatic immunity not be used as a shield to permit criminal acts. Statistics provided to the committee by the State Department indicate that there have been a total of 156 alleged criminal acts committed by individuals entitled to immunity during the last 5 years. In that 5-year period, 31 assaults, 2 rapes, 5 cases of drug trafficking, and 12 cases of weapons possessions were allegedly committed by individuals entitled to diplomatic immunity.

Title V of the committee bill seeks to address abuses of the diplomatic immunity rules within the framework of existing international law. Diplomats charged with serious crimes in the United

States will continue to be entitled to diplomatic immunity. However, when a member of the diplomatic community is alleged to have committed a serious crime, the Secretary of State is required to request the foreign minister of the sending state to waive that immunity in order to permit prosecution of the individual. If immunity is waived, the individual will be subject to normal prosecution procedures in the jurisdiction where the crime was committed. If the sending country does not waive the immunity, the Secretary of State is required to assure that the individual alleged to have committed the crime leaves the United States and is barred reentry permanently.

SECTION-BY-SECTION ANALYSIS

Section 1—Short Title

This section cites this legislation as the "Miscellaneous International Affairs Authorizations Act of 1988."

TITLE I—OVERSEAS PRIVATE INVESTMENT CORPORATION

Section 101—Short Title

Section 101 cites Title I as the "Overseas Private Investment Corporation Amendments Act of 1988."

Section 102—Updating Income Levels; Caribbean Basin Exception

Section 102 amends Section 231 of the Foreign Assistance Act with respect to the baseline for determining country per capita income levels. In keeping with past practice, applicable income levels are restated in terms of 1986 dollars instead of 1983 dollars. These income levels, which are automatically adjusted for inflation, determine the countries to which OPIC must give preferential consideration and those in which it must restrict its activities. Restatement of these income levels in terms of 1986 dollars is in the nature of a technical correction and has no substantive effect.

This section also exempts certain countries from the per capita income limitation, if such countries are participants in the Caribbean Basin Inititative pursuant to the Caribbean Basin Economic Recovery Act. With this change in current law, five CBI countries would become eligible for OPIC programs. They are Barbados, the Netherlands Antilles, Aruba, the Bahamas, and Trinidad and Tobago.

Section 103—Financing Developmental Technology and Products

Section 103 amends Section 234(c) of the Foreign Assistance Act to allow use in the United States of OPIC loans to adapt technologies necessary for a particular development project. At present, it is unclear whether OPIC loans can be disbursed for activities largely carried out within the United States. On occasion, products must be adapted by a project sponsor to meet the particular conditions and needs of a developing country. The committee believes that when OPIC financing of such adaptations is the only source of funds for such activity, then such funding is permissible.

It is not the committee's intention that adaptation of technology within the United States become a major activity of OPIC. It must

only be incidental to the primary objective of encouraging investments in OPIC-eligible countries. For that reason, the statute limits to 25% the portion of any loan which may be expended in the United States for this purpose and continues the proviso that OPIC loans be provided to small businesses and cooperatives.

Section 104—Pilot Program of Equity Financing

Section 104 amends Section 234 of the Foreign Assistance Act to establish a 4-year pilot program through which OPIC would be permitted to make equity investments (i.e., purchase shares in the investments) to help facilitate development projects in sub-Saharan Africa and the Caribbean.

This authorization is provided on a temporary basis in order to assess the usefulness and feasibility of such equity investments. Small businesses and cooperatives are to be given preference in this program.

The pilot equity program is to be targetted exclusively at developing countries in the Caribbean Basin and in sub-Saharan Africa. This program is intended to complement other initiatives to promote development in those countries in which there is scarcity of risk capital for investment. The Caribbean countries in which OPIC may use equity financing are limited to those countries otherwise eligible for financing under this title which have been designated as beneficiary countries under Section 212 of the Caribbean Basin Economic Recovery Act. The committee intends "sub-Saharan Africa" to be interpreted consistent with the existing usage of such term by the Department of State and the Agency for International Development. OPIC shall provide equity for projects only in those sub-Saharan African countries which are otherwise eligible for OPIC programs.

In considering the administration's request to authorize this new program, the committee recognizes that OPIC's ownership of private companies could create potential problems and conflicts with the public policy mandate of that agency. Therefore, the committee has included certain safeguards. OPIC's equity investment may not exceed 30 percent in any project. OPIC should endeavor to dispose of any such equity investment within 10 years of the date of acquisition.

Furthermore, the committee believes that the best interests of the private concern and OPIC would be served if the shares OPIC obtained in the equity investment were non-voting shares. This will be an additional safeguard against the potential for conflict of interest arising with respect to OPIC's involvement.

The Committee also wishes to stress that this authority to make equity investments is to be used only in those circumstances where a project sponsor can demonstrate that he or she has been unable to arrange other equity financing and the project could not meet additional debt-service requirements.

Annual consultations with Congress on the implementation of the pilot program are required.

Section 105—Enhancing Private Political Risk Insurance Industry

Section 105 amends Section 234A of the Foreign Assistance Act to replace the pilot reinsurance program, authorized in 1985, with

new measures to promote cooperation between OPIC and private American political risk insurers. The committee's action is based on OPIC's report that the potential for this pilot reinsurance program is limited and that a reinsurer's role is incompatible with existing requirements governing OPIC's activities.

To the extent consistent with other provisions governing its activities, OPIC is encouraged to assist in the development of associations, pools, or consortia of American political risk insurers; share insurance risks with the private sector through coinsurance, contingent insurance, or other means; and enter into risk-sharing agreements with private insurers to insure investments after the expiration of OPIC insurance coverage, provided that OPIC does not assume responsibility for more than 50 percent of the insurance being offered.

OPIC is also directed to establish an advisory group to assist OPIC in the development and implementation of cooperative programs under this section. Finally, section 105 requires OPIC to include information in its annual report to Congress on cooperative programs between OPIC and the private political risk insurance industry.

Section 106—Raising Ceiling on Investment Guaranties

Section 106 amends section 235(a)(2) of the Foreign Assistance Act to increase the maximum contingent liability of investment guaranties which OPIC may have outstanding at any one time from $750 million to $1.5 billion. OPIC is currently approaching the existing investment guaranty ceiling. The committee expects that OPIC will maintain adequate reserves as its contingent liability increases.

Section 107—Extending Issuing Authority

Section 107 amends Section 235(a)(5) of the Foreign Assistance Act to extend OPIC's authority to issue insurance and guaranties, which would otherwise expire on September 30, 1988, to September 30, 1992.

Section 108—Eligibility of Romania

Section 108 amends Section 239(f) of the Foreign Assistance Act to remove Romania from the group of Communist countries deemed eligible for OPIC programs. In light of the deteriorating record of Romania in the areas of human and workers rights in recent years, the committee believes that the foreign policy interests of the United States are no longer served by exempting Romania from prohibitions of Section 620(f) of the Foreign Assistance Act.

Section 109—Small and Minority-Owned Businesses

Section 109 expresses the sense of the Congress urging OPIC to continue to encourage U.S. small businesses, and in particular minority-owned small businesses, to invest in developing countries.

Section 110—Technical Amendments

Section 110 contains technical amendments to clarify statutory references and to delete inoperable provisions.

Section 111—OPIC Programs in Haiti

Section 111 provides that general statutory language prohibiting U.S. assistance for Haiti during fiscal year 1988, without specific reference to OPIC, shall not be construed to include a prohibition on OPIC programs. However, the committee wishes it to be clearly understood that statutory language prohibiting U.S. assistance authorized pursuant to the Foreign Assistance Act of 1961 is clearly intended to include a prohibition on the operation of OPIC programs in Haiti.

TITLE II—BOARD FOR INTERNATIONAL BROADCASTING

Section 201—Radio Transmitter Contruction and Modernization

Section 201 removes the earmarks on the Board for International Broadcasting's operating budget which set aside $12 million in both fiscal years 1988 and 1989 for the completion of the modernization program of Radio Free Europe/Radio Liberty stipulated in Public Law 100-204, the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989. This section also provides an additional authorization of $24 million to complete the modernization program.

The removal of the earmarks was requested by the President in his fiscal year 1989 budget submission, in order to enable Radio Free Europe/Radio Liberty to offset an anticipated $28 million shortfall in its operating budget as a result of adverse currency fluctuations. Of the $186 million currently authorized to be appropriated pursuant to Public Law 100-204 to the Board for International Broadcasting for fiscal year 1988, $174 million is authorized to fund the ongoing operations of the programs.

The remaining $12 million is specifically set aside for the modernization program. However, the Board for International Broadcasting estimates that $185 million will be required to maintain current operations through fiscal year 1988. First quarter losses have already exhausted the $3 million remaining in the currency reserve account. Therefore, pursuant to last year's budget summit agreement, the Board for International Broadcasting has decided to use modernization funds and other savings derived from a cut in operational improvements totaling $4.9 million to offset the projected currency losses.

Section 202—Broadcasting Relay Station in Israel

Section 202 authorizes to be appropriated to the Board for International Broadcasting such sums as may be necessary for the costs associated with the construction of a new relay station in Israel. This new facility is designed to enhance the ability of Radio Free Europe/Radio Liberty to counter intense jamming into certain targeted broadcast areas, as well as to upgrade the quality of the broadcasts.

To date, $34 million has been appropriated for this project in the fiscal year 1988 Continuing Resolution (Public Law 100-200) enacted on December 22, 1987. In addition, the President has requested $35 million for fiscal year 1989.

TITLE III—AU PAIR PROVISION

Section 301—Au Pair Provision

Section 301(a) expresses the sense of the Congress that the au pair cultural exchange programs previously authorized by USIA are in keeping with the goals and objectives of the Fulbright-Hays Act.

Section 301(b) prohibits USIA from termination or any substantial alteration of the terms and conditions of the au pair programs as previously authorized by USIA (Exchange Visitor Programs Nos. P-3-5214T and P-3-5238T). In taking this action the committee intends that USIA approve the continuation of these programs on a permanent basis under the terms and conditions (including the permissible hours of child care and guidelines for the educational components) as applied to the au pair programs under the previous authorization. Nothing in this section is intended to preclude any organization from seeking to participate as sponsors in the au pair cultural exchange program, subject to terms and conditions which currently govern the existing au pair programs.

TITLE IV—EXCLUSION OR DEPORTATION OF ALIENS

Section 401—Prohibition on Exclusion or Deportation of Aliens

Section 401 repeals Section 901(d) of the Foreign Relations Authorization Act, fiscal years 1988 and 1989. Section 901(d) would have sunset prohibitions on deportation or denial of visas or exclusion of admission into the United States of aliens due to past, current, or expected political beliefs, statements, or associations, which if engaged in by a U.S. citizen in the United States would be protected under the Constitution of the United States.

Given the applicability of Section 901 of the Foreign Relations Authorization Act to all otherwise non-excludable applicants, it is the committee's expectation that eligibility under this section shall be considered and conveyed to the applicant at the outset of the visa application process.

Since it is the committee's intention to prohibit visa denials based on beliefs, statements or associations, it is the committee's expectation that inquiries regarding such protected beliefs, statements and associations are no longer necessary.

Since the committee makes permanent the 1-year prohibition contained in the Foreign Relations Authorization Act, the committee likewise expects that so-called "lookout lists" of excludable aliens will be revised to conform with the intentions of this section.

TITLE V—DIPLOMATIC IMMUNITY ABUSE PREVENTION ACT

Section 501—Short Title

Section 501 provides a short title of "Diplomatic Immunity Abuse Prevention Act."

Section 502—Crimes Committed by Diplomats

Section 502(a) amends the Foreign Mission Act, Title II of the State Department Basic Authorities Act of 1956, to require the Director of the Office of Foreign Missions to keep records on each in-

cident in which an individual entitled to immunity is believed to have committed a serious crime.

Section 502(b) amends Section 5 of the Diplomatic Relations Act by adding a new subsection (b) to require the Secretary of State (1) to make an annual report to Congress on the incidents involving serious crimes believed to have been committed by individuals entitled to immunity, and on any undisputed debt owed by individuals entitled to immunity and (2) to work with law enforcement agencies to educate their officials on the extent of immunity from criminal jurisdiction to which members of the diplomatic community are entitled under international law and to assure that law enforcement officials fully investigate, charge, and prosecute individuals who commit serious crimes in the United States to the extent such action is consistent with such individual's immunity. In addition, this subsection prohibits any State Department employee from discouraging the investigation, charging, or prosecution of an alien, who is a member of a mission or any member of his family or any other alien not entitled to immunity. The Secretary may waive the prohibition with respect to a specific individual if the Secretary determines that significant foreign policy considerations or the national security so requires. Finally, this subsection requires that the Secretary notify each diplomatic mission in the United States of U.S. policy with respect to serious crimes committed by its members.

Section 503—Registration and Departure Procedures for Individuals With Diplomatic Immunity

Section 503 amends Section 3 of the Diplomatic Relations Act to require the Secretary to develop and implement registration and departure procedures for members of diplomatic missions and their families. Section 503 further states that no individual may be accredited as a diplomat if there is pending against such individual allegations of criminal conduct in any jurisdiction of the United States, except that the Secretary may waive this requirement if he determines that accreditation is required by significant foreign policy considerations or the national security and so reports to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate within 30 days after such accreditation.

Section 504—Waiver of Diplomatic Immunity or Removal When Charged With a Serious Crime

Section 504(a) amends the Foreign Missions Act to set up new procedures for requesting a waiver of diplomatic immunity for any individual entitled to immunity believed to have committed serious crimes. Under these procedures, the Secretary must (1) request the foreign ministry in the offender's country to waive immunity from criminal jurisdiction; (2) inform the foreign ministry in the offender's country that the United States intends to pursue compensation for damages resulting from the crime; and (3) if a waiver of immunity is denied, declare the individual non grata or ensure the individual's removal from the United States. The Secretary of State is directed to notify the Attorney General of each individual who leaves the United States because of that individual's alleged in-

volvement in a serious crime to assure that such individual is permanently barred reentry into the United States.

Section 504(b) amends Section 212(a) of the Immigration and Nationality Act to conform it to the amendments to the Foreign Missions Act in subsection (a), adding a new category of aliens excluded from admission to the United States: any alien who left the United States because of that alien's alleged involvement in a serious crime. An exception to exclusion is authorized to allow entry into the United States for the purpose of any proceeding regarding the crime or if the Attorney General, in consultation with the Secretary of State, determines that allowing entry into the United States is in the national interest.

Section 505—Authority to Institute and Maintain Criminal Prosecutions

Section 505 further amends Section 5 of the Diplomatic Relations Act to authorize an exception to current law's requirement that any action or proceeding brought against an individual entitled to immunity be dismissed. That exception states that, in the case of a criminal proceeding, prosecution may be instituted and maintained so long as no action is taken to violate any immunities to which such individual is entitled.

Section 506—Review of United States Policy on Diplomatic Immunity

Section 506 requires the Secretary of State to review U.S. policy on diplomatic immunity and report to the Congress within 180 days of enactment on recommendations for necessary changes in U.S. policy.

Section 507—Review of Procedures for Issuing Visas to Diplomats to the United States and the United Nations

Section 507 requires the Secretary of State, in consultation with the Attorney General, to review U.S. procedures for issuing visas to diplomats and report to Congress within one year on the results of this review.

Section 508—Liability Insurance to be Carried by Diplomatic Missions

Section 508 amends Section 6 of the Diplomatic Relations Act by adding a new subsection requiring the Director of the Office of Foreign Missions to establish a victims compensation insurance plan.

Section 509—Diplomatic Pouches

Section 509 directs the President to take "necessary steps" to assure that diplomatic pouches are not used for illicit transportation of narcotics, explosives, and weapons and any materials used to foster terrorism.

Section 510—Definitions

Sections 510(a) and 510(b) amend the Foreign Missions Act and the Diplomatic Relations Act to include definitions of the terms "serious criminal offense" and "individual entitled to immunity from the criminal jurisdiction of the United States". Section 510(c)

further amends Section 2 of the Diplomatic Relations Act to conform the definition of "family" of individuals entitled to immunity to the definition promulgated by the Department of State in its regulations.

Cost Estimate

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the Committee provides the following estimates of the costs of this bill, as prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 12, 1988.

Hon. Claiborne Pell,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate on the Miscellaneous International Affairs Authorizations Act of 1988, as ordered reported by the Senate Committee on Foreign Relations on July 27, 1988.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

With best wishes,

Sincerely,

James L. Blum,
Acting Director.

Attachment.

Congressional Budget Office Cost Estimate

1. Bill number: Unassigned.

2. Bill title: Miscellaneous International Affairs Authorizations Act of 1988.

3. Bill status: As ordered reported by the Senate Committee on Foreign Relations on July 27, 1988.

4. Bill purpose: Title I amends the Foreign Assistance Act of 1961 by giving the Overseas Private Investment Corporation (OPIC) the authority to guarantee loans and issue insurance through fiscal year 1992. It raises the contingent liability ceiling for the guaranteed loan program, and also creates a pilot program whereby OPIC can purchase equity in certain overseas business projects.

Title II amends the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, by providing additional funding for Board for International Broadcasting (BIB) grants and expenses. It also contains an open-ended authorization of funds for the Israeli Radio Relay Station.

Title III requires the United States Information Agency to continue processing applicants for an existing exchange program which sponsors foreigners who live and work in United States homes. Title IV makes permanent a current law which will expire within the next year. This law prohibits the government from not admitting or from deporting aliens due to beliefs which would be protected under the Constitution if they were held by United

States citizens. Title V mandates new procedures designed to curb abuses of diplomatic immunity.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1988	1989	1990	1991	1992	1993
DIRECT SPENDING SECTION 104						
OPIC Pilot Equity Program: Estimated outlays	0	5	5			
AUTHORIZATIONS						
Title I—OPIC:						
Estimated program levels:						
Guaranteed loans	0	208	217	225	234	
Insurance	0	1,907	1,986	2,065	2,149	
Estimated outlays	0	−2	−8	−14	−19	−19
Title II—BIB:						
Estimated authorized level	0	59	196			
Estimated outlays	10	36	79	80	44	4
Bill total: Estimated outlays	10	39	76	66	25	−14

The costs of this bill fall in budget function 150. Titles III, IV, and V are not expected to have a budgetary impact.

Basis for Estimate

This estimate assumes enactment of this legislation by October 1, 1988, and subsequent appropriation of the authorized amounts. Outlays were estimated using historical spendout rates and other historical data.

Section 104

Section 104 creates a four-year pilot program whereby OPIC can acquire equity in selected overseas projects. To finance this program, OPIC can use $10 million of its income to purchase equity investments. OPIC estimates that outlays from this new program will total $5 million in both fiscal years 1989 and 1990. This would involve direct spending since expenditures are not subject to amounts provided in appropriations acts.

TITLE I

The authority for OPIC to guarantee loans expires on September 30, 1988. The bill extends this authority until September 30, 1992. The guaranteed loan program is limited by both new commitment levels specified in annual appropriations acts, and the outstanding contingent liability ceiling contained in the authorizing statutes which the bill would increase from $750 million to $1.5 billion. The annual program levels in the table for new guaranteed loan commitments assume increases at only the rate of inflation. Due to repayments, cancellations, and the slow disbursement of guaranteed loans, these annual levels are expected to keep the contingent liability under the ceiling of $1.5 billion through fiscal year 1992.

Title I also extends OPIC's authority to issue insurance until September 30, 1992. Currently this authority expires on September

30, 1988. OPIC's level of insurance activity is limited only by a $7.5 billion outstanding contingent liability ceiling, which the bill leaves unchanged. The annual program levels for the insurance program listed in the table assume increases at only the rate of inflation. These levels are expected to keep the insurance program under its outstanding contingent liability ceiling through fiscal year 1992.

The commitment fees and insurance premiums which OPIC will receive from these two programs are expected to be greater than the disbursements due to administrative expenses, insurance payments, and guarantee claims. Thus, the outlays associated with these two programs are negative.

TITLE II

Section 201 amends Section 501(b) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, which earmarks $12 million for the BIB modernization program in both fiscal years 1988 and 1989. Section 201 removes these earmarks, thereby increasing the funds available for "grants and expenses". Due to the dollar's fall relative to the West German mark, BIB is expected to need the additional funds this fiscal year in order to continue broadcasting. Because "grants and expenses" funds spend faster than modernization funds, this will increase outlays in fiscal year 1988 by $10 million. If the enactment date is in late September 1988, the outlay impact in fiscal year 1988 may be decreased because of the limited time to obligate and outlay the funds for "grants and expenses." Using the funds for "grants and expenses" will require the removal of a similar constraint contained in BIB's fiscal year 1988 appropriations language.

Section 201 also authorizes an additional $24 million to maintain funding for the BIB modernization program. The estimate assumes the $24 million will be appropriated in fiscal year 1989.

Section 202 provides an open-ended authorization for the Israeli Radio Relay Station. The authorization level included in the estimate is based on the Administration's request of $35 million and $196 million for fiscal years 1989 and 1990, respectively. This $231 million is expected to be sufficient to complete the project.

6. Estimated cost to State and local governments: None.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Kent Christensen.
10. Estimate approved by: C.G. Nuckols (For James L. Blum, Assistant Director for Budget Analysis).

Evaluation of Regulatory Impact

In accordance with rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the Committee has concluded that there is no regulatory impact from this bill.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

* * * * * * *

TITLE IV—OVERSEAS PRIVATE INVESTMENT CORPORATION

SEC. 231. CREATION, PURPOSE AND POLICY.—* * *

* * * * * * *

(2) give preferential consideration to investment projects in less developed countries that have per capita incomes of [$896 or less in 1983 United States dollars,] *$984 or less in 1986 United States dollars,* and restrict its activities with respect to investment projects in less developed countries that have per capita incomes of [$3,887 or more in 1983 United States dollars;] *$4,269 or more in 1986 United States dollars (other than countries designated as beneficiary countries under section 212 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702));* and

(3) ensures that the project is consistent with the provisions of [sections 118 and] *section 117 (as so redesignated by the Special Foreign Assistance Act of 1986), section 118, and section* 119 of this Act relating to the environment and natural resources of, and [biological diversity] *tropical forests and endangered species* in, developing countries, and consistent with the intent of regulations issued pursuant to sections 118 and 119 of this Act.

* * * * * * *

SEC. 234. INVESTMENT INSURANCE AND OTHER PROGRAMS—

* * * * * * *

(a) INVESTMENT INSURANCE.—* * *

* * * * * * *

(c) DIRECT INVESTMENT.—To make loans in United States dollars repayable in dollars or loans in foreign currencies (including, without regard to section 1415 of the Supplemental Appropriation Act, 1953, such foreign currencies which the Secretary of the Treasury may determine to be excess to the normal requirements of the United States and the Director of the Bureau of the Budget may allocate) to firms privately owned or of mixed private and public ownership upon such terms and conditions as the Corporation may determine. [The Corporation may not purchase or invest in any stock in any other corporation, except that it may (1) accept as evidence of indebtedness debt securities convertible to stock, but such debt securities shall not be converted to stock while held by the Corporation, and (2) acquire stock through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness which would otherwise be in default, or as the result of any payment under any contract of insurance or guaranty. The Corporation shall dispose of any stock it may so acquire as soon as reasonably feasible under the circumstances then pertaining. Loans may be made under this subsection only for projects that are spon-

sored by or significantly involve United States small business or cooperatives.]

The Corporation may designate up to 25 percent of any loan under this subsection for use in the development or adaptation in the United States of new technologies or new products or services that are to be used in the project for which the loan is made and are likely to contribute to the economic or social development of less developed countries.

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(f) OTHER INSURANCE FUNCTIONS.—(1) * * *

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[The authority granted by paragraph (3) may be exercised notwithstanding the prohibition under subsection (c) against the Corporation purchasing or investing in any stock in any other corporation.] The amount of reinsurance of liabilities under this title which the Corporation may issue shall not in the aggregate exceed at any one time an amount equal to the amount authorized for the maximum contingent liability outstanding at any one time under section 235(a)(1). All reinsurance issued by the Corporation under this subsection shall require that the reinsured party retain for his own account specified portions of liability, whether first loss or otherwise.

(g) PILOT EQUITY FINANCE PROGRAM.—

(1) AUTHORITY FOR PILOT PROGRAM.—In order to study the feasibility and desirability of a program of equity financing, the Corporation is authorized to establish a 4-year pilot program under which it may, on the limited basis prescribed in paragraphs (2) through (5), purchase, invest in, or otherwise acquire equity or quasi-equity securities of any firm or entity, upon such terms and conditions as the Corporation may determine, for the purpose of providing capital for any project which is consistent with the provisions of this title, except that—

(A) the aggregate amount of the Corporation's equity investment with respect to any project shall not exceed 30 percent of the aggregate amount of all equity investment made with respect to such project at the time that the Corporation equity investment is made, except for securities acquired through the enforcement of any lien, pledge, or contractual arrangement as a result of a default by any party under any agreement relating to the terms of the Corporation's investment; and

(B) the Corporation's equity investment under this subsection with respect to any project, when added to any other investments made or guaranteed by the Corporation under subsection (b) or (c) with respect to such project, shall not cause the aggregate amount of all such investment to exceed, at the time any such investment is made or guaranteed by the Corporation, 75 percent of the total investment committed to such project as determined by the Corporation.

The determination of the Corporation under subparagraph (B) shall be conclusive for purposes of the Corporation's authority to make or guarantee any such investment.

(2) LIMITATION TO PROJECTS IN SUB-SAHARAN AFRICA AND CARIBBEAN BASIN.—Equity investments may be made under this subsection only in projects in countries eligible for financing under this title that are countries in sub-Saharan Africa or countries designated as beneficiary countries under section 212 of the Caribbean Basin Economy Recovery Act.

(3) ADDITIONAL CRITERIA.—In making investment decisions under this subsection, the Corporation shall give preferential consideration to projects sponsored by or significantly involving United States small business or cooperatives. The Corporation shall also consider the extent to which the Corporation's equity investment will assist in obtaining the financing required for the project.

(4) DISPOSITION OF EQUITY INTEREST.—Taking into consideration, among other things, the Corporation's financial interests and the desirability of fostering the development of local capital markets in less developed countries, the Corporation shall endeavor to dispose of any equity interest it may acquire under this subsection within a period of 10 years from the date of acquisition of such interest.

(5) CREATION OF FUND FROM CORPORATE REVENUES.—The Corporation is authorized to establish a fund to be available solely for the purposes specified in this subsection and to make a one-time transfer to the fund of $10,000,000 from its income and revenues.

(6) CONSULTATIONS WITH CONGRESS.—The Corporation shall consult annually with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate on the implementation of the pilot equity finance program established under this subsection.

[SEC. 234A. FACULTATIVE REINSURANCE PROGRAM.—(a) * * *

* * * * * * *

[(e) REPORT TO THE CONGRESS.—The Corporation shall, not later than eighteen months after the date of the enactment of the Overseas Private Investment Corporation Amendments Act of 1985, submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the implementation of the facultative reinsurance program established under subsection (a).]

SEC. 234A. ENHANCING PRIVATE POLITICAL RISK INSURANCE INDUSTRY.

(a) COOPERATIVE PROGRAMS.—In order to encourage greater availability of political risk insurance for eligible investors by enhancing the private political risk insurance industry in the United States, and to the extent consistent with this title, the Corporation shall undertake programs of cooperation with such industry, and in connection with such programs may engage in the following activities:

(1) Utilizing its statutory authorities, encourage the development of associations, pools, or consortia of United States private political risk insurers.

(2) Share insurance risks (through coinsurance, contingent insurance, or other means) in a manner that is conducive to the growth and development of the private political risk insurance industry in the United States.

(3) Notwithstanding section 237(e), upon the expiration of insurance provided by the Corporation for an investment, enter into risk-sharing agreements with United States private political risk insurers to insure any such investment; except that, in cooperating in the offering of insurance under this paragraph, the Corporation shall not assume responsibility for more than 50 percent of the insurance being offered in each separate transaction.

(b) ADVISORY GROUP.—

(1) ESTABLISHMENT AND MEMBERSHIP.—The Corporation shall establish a group to advise the Corporation on the development and implementation of the cooperative programs under this section. The group shall be appointed by the Board and shall be composed of up to 12 members, including the following:

(A) Up to seven persons from the private political risk insurance industry, of whom no fewer than two shall represent private political risk insurers, one shall represent private political risk reinsurers, and one shall represent insurance or reinsurance brokerage firms.

(B) Up to four persons, other than persons described in subparagraph (A), who are purchasers of political risk insurance.

(2) FUNCTIONS.—The Corporation shall call upon members of the advisory group, either collectively or individually, to advise it regarding the capability of the private political risk insurance industry to meet the political risk insurance needs of United States investors, and regarding the development of cooperative programs to enhance such capability.

(3) MEETINGS.—The advisory group shall meet not later than September 30, 1989, and at least annually thereafter. The Corporation may from time to time convene meetings of selected members of the advisory group to address particular questions requiring their specialized knowledge.

(4) FEDERAL ADVISORY COMMITTEE ACT.—The advisory group shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 235. ISSUING AUTHORITY, DIRECT INVESTMENT FUND AND RESERVES.—(a)(1) * * *

* * * * * * *

(2) The maximum contingent liability outstanding at any one time pursuant to guaranties issued under section 234(b) shall not exceed in the aggregate [$750,000,000.] *$1,500,000,000.* Commitments to guarantee loans are authorized for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

* * * * * * *

(5) The authority of section 234 (a) and (b) shall continue until September 30, [1988.] *1992.*

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SEC. 237. GENERAL PROVISIONS RELATING TO INSURANCE [AND GUARANTY] *GUARANTY, AND FINANCING* PROGRAM.—(a) * * *

* * * * * * *

SEC. 239. GENERAL PROVISIONS AND POWERS.—(a) * * *

* * * * * * *

(f) Except for the provisions of this title, no other provision of this or any other law shall be construed to prohibit the operation in Yugoslavia, [Romania,] or the People's Republic of China of the programs authorized by this title, if the President determines that the operation of such program in such country is important to the national interest.

(g) The requirements of section [118(c)] *117(c)* of this Act relating to environmental impact statements and environmental assessments shall apply to any investment which the Corporation insures, reinsures, guarantees, or finances under this title in connection with a project in a country.

* * * * * * *

SEC. 240A. REPORTS TO THE CONGRESS.—* * *

* * * * * * *

[(c)(1) Not later than December 31, 1987, the Corporation shall submit to the Congress a report analyzing the actual effects, as of September 30, 1986, on employment in the United States of all projects with respect to which any insurance, reinsurance, or guaranty issued by the Corporation was in effect on September 30, 1986, or with respect to which repayments on direct loans by the Corporation were being made as of that date. The report shall set forth—

[(A) the amount of United States exports generated by those projects during fiscal year,

[(B) to the extent feasible, the final destination of the products produced each fiscal year as a result of those projects, and

[(C) the impact of such production on the production of similar products in the United States during each fiscal year with regard to both domestic sales and exports.

[(2) In preparing this report, the Corporation shall collect factual data for each of the projects described in paragraph (1). The report may, however, present this information and the analysis of this information in aggregate form, but only if—

[(A) those projects which have a positive effect on employment in the United States and those projects which have a negative effect on employment in the United States are grouped separately; and

[(B) there is set forth for each such grouping the key characteristics of the projects within that grouping, including the number of projects in each economic sector, the countries in which the projects in each economic sector are located, and the impact of the projects in each economic sector on the level of employment in the United States and on the United States trade balance.

[(3) The Corporation shall consult with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate in determining the methodology to be used in acquiring the information and in doing the analysis necessary to prepare the report required by this subsection, including identification of which projects should be analyzed. To facilitate this consultation, the Corporation shall submit to those committees by September 30, 1986, a written description of its proposed methodology, including its proposed methodology with respect to determining final destinations.

[(4) To the extent that the report required by this subsection does not identify the final destination of the products produced as a result of a particular project, the report shall explain why it was not feasible to provide that information.]

(d) The Corporation shall maintain as part of its records—

(1) all information collected in preparing the report required by subsection (c) *(as in effect before the enactment of the Overseas Private Investment Corporation Amendments Act of 1988)*, whether the information was collected by the Corporation itself or by a contractor; and

(2) a copy of the analysis of each project analyzed in preparing the reports required by either subsection (b) or (c).

(e) Each annual report required by subsection (a) shall include an assessment of programs implemented by the Corporation under section 234(a), including the following information, to the extent such information is available to the Corporation:

(1) The nature and dollar value of political risk insurance provided by private insurers in conjunction with the Corporation, which the Corporation was not permitted to provide under this title.

(2) The nature and dollar value of political risk insurance provided by private insurers in conjunction with the Corporation, which the Corporation was permitted to provide under this title.

(3) The manner in which such private insurers and the Corporation cooperated in recovery efforts and claims management.

[(e)] *(f)* Subsections (b) and [(c)] *(e)* do not require the inclusion in any report submitted pursuant to those subsections of any information which would not be required to be made available to the public pursuant to section 552 of title 5, United States Code (relating to freedom of information).

* * * * * * *

FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1988 AND 1989

* * * * * * *

SEC. 501. AUTHORIZATION OF APPROPRIATIONS; ALLOCATION OF FUNDS.

(a) * * *

[(b) ALLOCATION OF FUNDS.—Of the funds authorized to be appropriated by section 8(a)(1)(A) of the Board for International Broadcasting Act of 1973, $12,000,000 for the fiscal year 1988 and

[$12,000,000 for the fiscal year 1989 shall be available only for radio transmitter construction and modernization.]

(b) AUTHORIZATION OF APPROPRIATIONS FOR RADIO TRANSMITTER CONSTRUCTION AND MODERNIZATION.—Section 8 of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2877) is amended by adding at the end thereof the following:

* * * * * * *

BOARD FOR INTERNATIONAL BROADCASTING ACT OF 1973 (RADIO FREE EUROPE/RADIO LIBERTY)

* * * * * * *

SEC. 2. * * *

* * * * * * *

SEC. 8. (a)(1) * * *

* * * * * * *

(d) In addition to amounts authorized to be appropriated under subsection (a)(1)(A), there are authorized to be appropriated without fiscal year limitation $24,000,000 to the Board for International Broadcasting for radio transmitter construction and modernization.

(e) There are authorized to be appropriated to the Board such sums as may be necessary for the costs associated with construction of a relay station in Israel. Amounts appropriated under this subsection are authorized to be made available until expended.

* * * * * * *

FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1988 AND 1989

* * * * * * *

TITLE IX—IMMIGRATION AND REFUGEE PROVISIONS

SEC. 901. PROHIBITION ON EXCLUSION OR DEPORTATION OF ALIENS ON CERTAIN GROUNDS.

(a) IN GENERAL.—* * *

[(d) EFFECTIVE PERIOD.—Subsection (a) shall only apply to—

[(1) applications for visas submitted during 1988;

[(2) admissions sought after December 31, 1987, and before March 1, 1989; and

[(3) deportations based on activities occurring during 1988 or for which deportation proceedings (including judicial review with respect to such a proceeding) are pending at any time during 1988.]

* * * * * * *

STATE DEPARTMENT BASIC AUTHORITIES ACT OF 1956

* * * * * * *

TITLE II—AUTHORITIES RELATING TO THE REGULATION OF FOREIGN MISSIONS

DECLARATION OF FINDINGS AND POLICY

SEC. 201. (a) * * *

* * * * * * *

DEFINITIONS

SEC. 202. (a) For purposes of this title—

(1) * * *

* * * * * * *

(7) "sending State" means the foreign government, territory, or political entity represented by a foreign mission; [and]

(8) "United States" means, when used in a geographic sense, the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United [States.] *States; and*

(9) the term "serious criminal offense" means—

(A) any felony;

(B) any crime of violence, as defined in section 16 of title 18, United States Code; or

(C) reckless driving or driving while intoxicated or under the influence of alcohol or drugs which involves personal injury; and

(10) the term "individual entitled to immunity from the criminal jurisdiction of the United States" means any individual who is not subject to such criminal jurisdiction as a result of international obligations of the United States arising from multilateral agreements, bilateral agreements, or international law.

* * * * * * *

ENFORCEMENT OF COMPLIANCE WITH LIABILITY INSURANCE REQUIREMENTS

SEC. 204A. (a)(1) * * *

* * * * * * *

CRIMES COMMITTED BY DIPLOMATS

SEC. 204B. The Director shall develop and maintain records on each incident in which there is involved an individual with immunity from the criminal jurisdiction of the United States who the Director reasonably believes has committed a serious criminal offense within the United States. Each such record shall include—

(1) the identity of such individual;

(2) the nature of the offense committed by such individual, including whether such offense was committed against property or persons;

(3) whether such offense involved reckless driving or driving while intoxicated; and

(4) the number and nature of all other criminal offenses committed in the United States by such individual.

WAIVER OF DIPLOMATIC IMMUNITY OR REMOVAL WHEN CHARGED WITH A SERIOUS CRIME

SEC. 204C. (a) Whenever there is probable cause to believe that an individual who is entitled to immunity from the criminal jurisdiction of the United States may have committed a serious criminal offense (particularly a crime of violence), the Secretary of State shall—

(1) request the foreign ministry of the country such individual represents to waive the immunity of that individual;

(2) through the appropriate United States foreign mission, promptly inform the foreign ministry of the offender's country of the United States Government's intention actively to pursue compensation for all damages resulting from the actions of the offender; and

(3) if such waiver is denied, immediately declare such individual non grata or ensure the removal from the United States or, where appropriate, declare that the individual's principal sponsor is no longer acceptable as a diplomat or consular representative in the United States if there is a prima facie case against such individual which, absent immunity from criminal jurisdiction, would lead to prosecution.

(b) The Secretary of State shall notify the Attorney General of each individual entitled to immunity from the criminal jurisdiction of the United States who voluntarily leaves, or is asked to leave, the United States because of that individual's alleged involvement in a serious criminal offense in order to prevent permanently that person from reentering the United States.

DIPLOMATIC RELATIONS ACT

SEC. 1. * * *

* * * * * * *

DEFINITIONS

SEC. 2. As used in this Act—

(1) * * *

* * * * * * *

[(2) the term "family" means—

(A) the members of the family of a member of a mission described in paragraph (1)(A) who form part of his or her household if they are not nationals of the United States, and

(B) the members of the family of a member of a mission described in paragraph (1)(B) who form part of his or her household if they are not nationals or permanent residents of the United States.]

(2) the term "family", subject to further limitation by the Secretary of State where warranted by reciprocity or exceptional circumstances, means—

(A) the spouse of a member of a mission described in paragraph (1)(A) and his or her unmarried children under 21 years of age, who are not members of some other household, and who reside exclusively in the principals household, if the spouse or children are not nationals of the United States;

(B) the spouse of a member of a mission described in paragraph (1)(B) and his or her unmarried children under 21 years of age, who are not members of some other household, and who reside exclusively in the principal's household, if the spouse or children are not nationals or permanent residents of the United States;

(C) the unmarried children of a member of a mission described in paragraph (1)(A) who are under 23 years of age and attending an institution of higher education on a full-time basis, if they are not nationals of the United States;

(D) the unmarried children of a member of a mission described in paragraph (1)(B) who are under 23 years of age and attending an institution of higher education on a full-time basis, if they are not nationals or permanent residents of the United States; and

(E) under exceptional circumstances and with the express advance approval of the Department of State, other persons who are not members of some other household, who reside exclusively in the principal's household, and who are recognized by the sending State and members of the family forming part of the household.

(3) the term "mission" includes missions within the meaning of the Vienna convention and any missions representing foreign governments, individually or collectively, which are extended the same privileges and immunities, pursuant to law as are enjoyed by missions under the Vienna Convention; [and]

(4) the term "Vienna Convention" means the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227), entered into force with respect to the United States on December 13, [1972.] *1972; and*

(5) the term "serious criminal offense" means—

(A) any felony;

(B) any crime of violence, as defined in section 16 of title 18, United States Code; or

(C) reckless driving or driving while intoxicated or under the influence of alcohol or drugs which involves personal injury; and

(6) the term "individual entitled to immunity from the criminal jurisdiction of the United States" means any individual who is not subject to such criminal jurisdiction as a result of international obligations of the United States arising from multilateral agreements, bilateral agreements, or international law.

SEC. 3. (a)(1) * * *

* * * * * * *

(c)(1) The Secretary of State shall develop and implement registration and departure procedures for members of missions, and the family members of such members, in order to identify those individ-

uals in the United States who are entitled to immunity from the criminal jurisdiction of the United States.

(2) No individual shall enjoy diplomatic or consular immunity in the United States if at the time of his proposed accreditation there is pending against such individual allegations of criminal conduct in any jurisdiction within the United States.

(3) The Secretary may waive paragraph (2) with respect to an individual if the Secretary determines, and reports to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate within 30 days after such accreditation, that such accreditation is required by significant foreign policy considerations or the national security.

* * * * * * *

DISMISSAL OF ACTIONS AGAINST INDIVIDUALS ENTITLED TO IMMUNITY

[SEC. 5.] *SEC. 5(a).* Any action or proceeding brought against an individual who is entitled to immunity with respect to such action or proceeding under the Vienna Convention on Diplomatic Relations, under section 3(b) or 4 of this Act, or under any other laws extending diplomatic privileges and immunities, shall be dismissed, *except that, in the case of a criminal proceeding, prosecution may be instituted and maintained if no measure is taken in derogation of any immunities of any individual who is entitled to immunity from the criminal jurisdiction of the United States.* Such immunity may be established upon motion or suggestion by or on behalf of the individual, or as otherwise permitted by law or applicable rules of procedure.

(b) CRIMES COMMITTED BY DIPLOMATS.—

(1) REPORT.—Every 12 months after the date of enactment of this Act, the Secretary of State shall submit to the Congress a report describing—

(A) the incidents occurring during the preceding 12 months which were recorded under section 204B of the Foreign Missions Act, including the information developed and maintained under such section; and

(B) the undisputed indebtedness which is owed to an individual or entity within the United States by a mission, members of the mission, or their families and for which repayment is in arrears by more than 6 months.

(2) LAW ENFORCEMENT INDIVIDUALS.—The Secretary of State shall take such steps as may be necessary—

(A) to educate law enforcement officials on the extent of the immunity from criminal jurisdiction provided to members of a mission and to family members of such members, under the Vienna Convention; and

(B) to assure that law enforcement officials fully investigate, charge, and prosecute, to the extent consistent with immunity from criminal jurisdiction under the Vienna Convention, any member of a mission, and any family member of such a member, who commits a serious criminal offense within the United States.

(3) DISCOURAGING PROSECUTIONS.—

(A) No officer or employee of the Department of State may seek to discourage any investigation, charge, or prosecution by a Federal, State, or local government of—

(i) an alien who is a member of a mission,

(ii) a family member of an alien described in clause (i), or

(iii) any other alien not entitled to immunity from the criminal jurisdiction of the United States.

(B) No information shall be required to be submitted under paragraph (1) with respect to a specific individual if the Secretary of State determines and, within 30 days after the determination, reports to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate that significant foreign policy considerations or the national security so requires.

(4) NOTIFICATION OF DIPLOMATIC CORPS.—The Secretary of State shall notify the members of each mission in the United States of United States policies relating to criminal offenses (particularly crimes of violence) committed by such members and the family members of such members, including the policy of obtaining criminal indictments, requiring such members to leave the country, and declaring such members persona non grata.

REQUIREMENT FOR LIABILITY INSURANCE

SEC. 6. (a) Each mission, members of the mission and their families, and individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, shall comply with any requirement imposed by the regulations promulgated by the Director of the Office of Foreign Missions in the Department of State pursuant to [subsection (b).] *subsections (b) and (d).*

* * * * * * *

(d) The Director of the Office of Foreign Missions shall, by regulation, establish, and take such steps as he deems necessary to ensure compliance with, liability insurance requirements which can reasonably be expected to afford adequate compensation for injury to person or property resulting from or arising out of the activities of a mission, members of the mission and their families, and individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, other than liability relating to risk described in subsection (b).

* * * * * * *

TITLE 8—ALIENS AND NATIONALITY

* * * * * * *

CHAPTER 1—GENERAL PROVISIONS

* * * * * * *

§1 * * *

* * * * * * *

§1182. Excludable aliens

(a) GENERAL CLASSES

* * * * * * *

(1) * * *

* * * * * * *

(33) Any alien who during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(A) the Nazi government in Germany,

(B) any government in any area occupied by the military forces of the Nazi government of Germany,

(C) any government established with the assistance or cooperation of the Nazi government of Germany, or

(D) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political [opinion.] *opinion; and*

(34) Any alien with respect to whom the Secretary of State has notified the Attorney General under section 204C of the Foreign Missions Act because of that alien's alleged involvement in an offense defined in section 202(a)(9) of that Act, except that such alien may be admitted to the United States—

(A) with respect to any proceeding regarding such crime, or

(B) if the Attorney General, in consultation with the Secretary of State, determines that admitting such individual into the United States is in the national interest.

○

Calendar No. 987

100TH CONGRESS
2d Session

SENATE

REPORT
100-545

ANTI-APARTHEID ACT AMENDMENTS OF 1988

SEPTEMBER 23 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

Mr. PELL, from the Committee on Foreign Relations, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2756]

The Committee on Foreign Relations, to which was referred the bill (S. 2756) the Anti-Apartheid Act Amendments of 1988, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE

The purpose of the bill is to promote political, economic, and social change leading to the dismantling of apartheid and the establishment of a nonracial, democratic political system in South Africa by strengthening existing economic and political sanctions imposed under the Comprehensive Anti-Apartheid Act of 1986, enlisting Presidential leadership for an international campaign of economic and diplomatic pressure to end apartheid, and providing assistance to disadvantaged South Africans.

MAJOR PROVISIONS

The bill, which amends the Comprehensive Anti-Apartheid Act of 1986, imposes the following sanctions on South Africa:

1. A ban on all U.S. investment in South Africa (except for investments in firms owned by South Africans economically and politically disadvantaged by apartheid, and investments that cannot be disposed of because of South African laws);

S383-5

2. A ban on all exports to South Africa (except for publications, humanitarian relief articles, agricultural commodities, news media equipment and technology, and public and private U.S. aid to South Africans economically and politically disadvantaged by apartheid);

3. A ban on all imports from South Africa (except for strategic minerals, publications, and imports from firms owned by South Africans economically and politically disadvantaged by apartheid);

4. A ban on the transporting of oil to South Africa;

5. A ban on intelligence cooperation (except for activities reasonably designed to facilitate the collection of necessary intelligence and information concerning Cuban and other Communist forces in southern Africa); and

6. A ban on all nuclear trade and cooperation with South Africa.

The bill requires U.S. firms to negotiate with employee unions or representatives about the terms of disinvestment from South Africa and provides for a one-time, 180-day Presidential waiver of the investment prohibitions.

The bill adds the granting of independence to Namibia as a sixth condition for the termination of sanctions. The other five conditions specified in the 1986 Act are: release of all political prisoners including Nelson Mandela; repeal of the current state of emergency and release of all detainees; unbanning of democratic political parties and permitting the free exercise by all South Africans of the right to form political parties, express political opinions, and participate in the political process; repeal of the Group Areas and Population Registration Acts; and entering into good faith negotiations with truly representative members of the black majority.

The bill establishes a new position of South Africa sanctions coordinator in the Department of State and an Interagency Coordinating Committee on South Africa. It strengthens provisions in the 1986 Act dealing with multilateral measures to undermine apartheid by directing the President to begin negotiations with other nations to reach cooperative agreements imposing sanctions on South Africa, to pursue sanctions against South Africa at the United Nations, and to retaliate against foreign firms taking advantage of U.S. sanctions.

The bill provides up to $40 million per year in economic support funds for South Africans disadvantaged by apartheid and earmarks $4 million of this for refugee education and assistance for South Africans and Namibians.

The bill directs the President to develop a program to reduce U.S. dependency on strategic minerals from South Africa and to support to the Congress on the program within 9 months of enactment. In addition, the bill mandates reports to the Congress on possible United States actions to reduce South Africa's foreign exchange earnings from gold sales, on South African involvement in international terrorism, and on the average amounts of critical materials imported into the United States from member countries and observers of the Soviet bloc's Council for Mutual Economic Assistance.

The bill contains sense of the Congress language calling for an anti-trust investigation of the South African diamond cartel and a study on the feasibility of identifying the origins of diamonds, and urging the President to rigorously enforce the import ban on diamonds.

The bill also directs the President to discuss South African circumvention of U.S. sanctions with the frontline states and to denounce the use of violence by all parties in South Africa.

BACKGROUND

Although the level of unrest and violence has decreased, the South African situation has continued to deteriorate during the last 2 years. The nationwide state of emergency, first imposed in June 1986, continues to be in force. More than 30,000 people were detained, including up to 10,000 children, in 1986 and 1987. According to several reports, many of these were the victims of brutality and torture by South African Government officials. Police and security forces have been given expanded powers, and a National Security Management System has been established to increase the military's involvement in the black townships. Government soldiers continue to patrol the townships. Nearly 2,000 people died in 1986 and 1987, many in clashes between the police on the one hand and anti-apartheid protesters or strikers on the other, and some as a result of conflict between black groups.

During the last 2 years, the South African Government has attempted to decimate the anti-apartheid organizations and activitists. This culminated in February of this year with the banning of 18 major anti-apartheid organizations including the United Democratic Front [UDF], a coalition of more than 700 anti-apartheid groups, and the Congress of South African Trade Unions [COSATU], the largest black trade union federation in South Africa. By the admission of the South African Government, none of these organizations had engaged in any illegal or unconstitutional activities. A month later, the Committee for the Defense of Democracy, an organization created by religious, educational, womens and sports groups to fill the void left by the February restrictions on the anti-apartheid organizations, was banned. Most recently, the Government has issued threats against Archbishop Tutu and others who are calling for a boycott of the upcoming municipal elections. Through these actions, the South African Government has effectively precluded peaceful, nonviolent protest against the apartheid system.

The South African Government's campaign against the opponents of apartheid has been accompanied by unprecedented censorship of the press and media. The press is prohibited from reporting news of violence, and of strikes and other forms of organized dissent; from quoting restricted organizations or their spokesmen; and from running advertisements or reports that improve or promote the image of banned organizations. Publications produced within the black community, the so-called "alternative media," have been targeted by the South African Government on the grounds that they support "leftist and radical groups." Earlier this year, the Government suspended publication of two alternative papers: The

New Nation, widely read among blacks and funded by the Catholic Church, and South, which has a significant readership among the Coloured population in Cape Town.

Little has occurred in the way of reform in the last two years. No credible black leader has agreed to participate in the National Council, an advisory council envisioned by the government as a precursor to a Council of State on which blacks would share power with other racial groups. Amendments to the Group Areas Act, now pending in Parliament, do not dismantle the basic system of residential segregation. The underpinnings of apartheid—segregated housing and education, the migratory labor system, the homelands policy, and race classification—remain untouched by reform. Moreover, State President P.W. Botha has made it clear that any new system of government in South Africa must be based on "group rights."

As it increased repression at home, the South African Government conducted raids against neighboring Swaziland, Zambia, Mozambique and Botswana to root out alleged activity by the African National Congress [ANC]. The ANC has charged the South African Government with murdering its representative in Paris and planting a car bomb which injured an ANC official in Maputo earlier this year. The South African Government, in turn, regards the ANC as responsible for the increase in bombings inside South Africa. In recent months, the regional situation has improved with the resumption of U.S.-brokered negotiations between South Africa and Angola for a Namibian settlement, and the recent meeting between South African President Botha and Mozambican President Joaquim Chissano have served to decrease tensions in southern Africa.

Committee Action

The committee held 3 days of public hearings on June 22, 23, and 24 on United States policy options toward South Africa, and a closed hearing with the Senate Intelligence Committee on July 28 on the question of intelligence cooperation between the United States and South Africa. The committee met on September 8 and 9 to consider legislation. S. 2756, introduced by Senators Cranston, Kennedy, Weicker, and Simon on September 7, was made the mark-up vehicle. This legislation is nearly identical to H.R. 1580, passed by the House on August 11. On September 14, the committee, by a vote of 10 to 9, orderd reported favorably S. 2756, with an amendment offered by Senator Cranston to delete the provisions of the bill concerning the granting of future oil and mineral leases to foreign corporations and their subsidiaries in the United States. Voting in the affirmative were Senators Pell, Biden, Sarbanes, Cranston, Dodd, Kerry, Simon, Sanford, Adams, and Moynihan. Voting in the negative were Senators Helms, Lugar, Kassebaum, Boschwitz, Pressler, Murkowski, Trible, Evans, and McConnell.

Committee Comments

In enacting the Comprehensive Anti-Apartheid Act in October 1986 over a presidential veto, Congress rejected the Administration's failed policy of "constructive engagement" in favor of a

policy that would send a clear signal of United States opposition to apartheid and bring political and economic pressure to bear on the South African Government to dismantle the apartheid system. The Act provides for additional sanctions to be imposed if the South African Government fails to make "significant progress" toward the ending of apartheid.

The committee shares the view, expressed by the President in his October 1987 report to the Congress, that South Africa has failed to make significant progress toward ending apartheid. As the President reported, the Government of South Africa has taken none of the actions specified in the 1986 Act as measures of progress—i.e., release of political prisoners including Nelson Mandela; repeal of the state of emergency and release of all detainees; unbanning of democratic political parties and permitting the free exercise by all South Africans of the right to form political parties, express political opinions, and participate in the political process; repeal of the Group Areas and Population Registration Acts; and entering into negotiations with truly representative leaders of the black majority. However, the committee does not accept the contention made in the President's October report that sanctions have been ineffective.

The committee believes that the 1986 sanctions have been extremely effective in demonstrating the American people's opposition to apartheid and in building bridges to black South Africans, many of whom regarded the Administration's policy of "constructive engagement" as United States support for the white minority government in South Africa. In addition, some positive developments have occurred in South Africa since the imposition of selected sanctions by the United States and other Western countries. Afrikaner unity has been fragmented. Key Afrikaner institutions such as the Dutch Reformed Church, the elite secret society known as the Broederbond, the "New Nats" wing of the ruling National Party, and Shellbosch and other Afrikaner universities are engaged in increasingly heated debate over the apartheid issue and the future of South Africa. The creation of a new Independent Party by former members of the ruling National Party and the formation of extraparliamentary organizations to promote a dialog between whites and blacks in South Africa are further evidence that change is slowly occurring in the white community.

The committee recognizes that the sanctions imposed under the 1986 Act are limited and unilateral and that their effectiveness would be greatly enhanced if adopted by other nations. In the committee's view, the Administration has attempted to undermine the utility of the sanctions by refusing to fulfill the provisions of the 1986 Act designed to make sanctions against South Africa multilateral and by expressing ongoing opposition to sanctions as an instrument of policy in the South African case. Notwithstanding these factors, the committee notes that the South African Government has repeatedly expressed concern about the accumulating costs of sanctions on trade and investment.

Under the provisions of the 1986 Act, the President is to recommend additonal sanctions if he reports, as he did last October, that significant progress has not been made in dismantling apartheid. The committee regards the President's refusal to recommend additional sanctions as a failure to comply with the Act and to weaken

the process of pressure-building embodied in the Act. S. 2756, which increases political, economic, and diplomatic pressure on South Africa, restores that process.

The committee does not regard sanctions in and of themselves as a complete policy toward South Africa. The committee believes that sanctions are most effective when applied multilaterally, particularly by South Africa's major trading partners. In the committee's view, the United States must take the lead in coordinating a multilateral effort designed to bring economic as well as diplomatic and political pressure to bear on South Africa. The committee understands that the United States cannot play this role without executive leadership. Provisions of S. 2756 make explicit the role that the executive branch must play in this effort.

The committee believes that American policy toward South Africa must demonstrate solidarity with those struggling for freedom and justice while raising the costs to the South African Government of maintaining apartheid. In the committee's view, the prospects for success will be enhanced by strong executive leadership, bipartisan support, and coordination with our European and Asian allies to ensure that pressure is multilateral and comprehensive. The committee regards S. 2756 as a signal of continued American support for the opponents of apartheid, as a means of raising the costs to the South African Government and its white supporters, and as a step toward a coordinated, Western policy vis-a-vis South Africa.

SECTION-BY-SECTION ANALYSIS

Sec. 1—Short Title; References; Table of Contents

Subsection (a) states that the bill may be cited as the "Anti-Apartheid Act Amendments of 1988".

Subsection (b) states that references in the bill to "the Act" are to the Comprehensive Anti-Apartheid Act of 1986, Public Law 99-440.

Subsection (c) lists the three titles of the bill with the sections that each contains.

TITLE I—SANCTIONS AGAINST INVESTMENT IN, AND EXPORTS TO, SOUTH AFRICA AND OTHER MEASURES (EXCEPT IMPORT RESTRICTIONS) TO END APARTHEID

Sec. 101—Prohibitions on Investment in, and Exports to, South Africa

Subsection (a) amends section 301 of the Comprehensive Anti-Apartheid Act of 1986, to prohibit a U.S. person from purchasing, acquiring owning, or holding any investment in South Africa. As amended, section 301 would require all U.S. persons to divest themselves of current investments in South Africa within 180 days after enactment and would prohibit future investments in that country.

The prohibition on the holding of investments in amended section 301 would not apply to investments in firms which, after the investment, are at least 90 percent owned by, and controlled by, South Africans economically and politically disadvantaged by apartheid or to individuals who have left South Africa and whose previously acquired assets are considered, under South African

law, to be emigrant non-resident assets which cannot be disposed of or transferred. The committee understands that any rights to the previously acquired assets in South Africa described in section 301(c)(1), as amended, may be passed on to immediate family members (i.e., children) lawfully residing in the Unitd States, upon the death of the individuals described in section 301(c)(2), as amended. Section 301(c)(2), as amended, defines an "individual" as a person who, on the date of enactment of this bill, is a former citizen or resident of South Africa and a citizen of the United States or a former citizen or resident of South Africa and a permanent resident alien in the United States. The term "investment in South Africa" is defined elsewhere in the bill.

Subsection (b) amends section 303 of the 1986 Act. As amended, section 303 would prohibit the export or re-export to South Africa of goods or technology subject to the jurisdiction of the United States and would prohibit any person subject to United States jurisdiction from exporting or re-exporting to South Africa. The ban would take effect 180 days after enactment.

The prohibitions under amended section 303 would not apply to publications, including books, newspapers, magazines, films, television programming, phonograph records, video and audio tape recordings, photographs, microfilm, microfiche, posters, and similar materials; donations of articles intended to relieve human suffering such as food and medicine; commercial sales of agricultural commodities and products; goods and technology for information gathering or dissemination; certain goods under an agreement entered into on or before April 20, 1988, and exported before one year from the date of enactment; economic and human rights assistance; and contributions to charitable organizations.

Subsection (c) allows a person affected by amended section 301 relating to disinvestment to apply to the President for a one-time, 180-day waiver of the prohibition on investment. The President may waive, for good cause, the application of the provisions of section 301 for a period of not more than 180 days after such section takes effect. Application of the waiver provision would provide a period of up to 360 days after enactment of the bill for a United States person to disinvest from South Africa. Provisions of the Comprehensive Anti-Apartheid Act of 1986 are to remain in force during any waiver period granted under this subsection.

Subsection (d) repeals the following provisions of the 1986 Act: 212 (permitting South Africa participation in United States agricultural export credit and promotion programs), 304 (banning computer exports to apartheid-enforcing agencies), 309 (banning uranium, coal and textile imports), 310 (prohibiting new investment), 317 (prohibiting export of U.S. munitions list items), 318 (notification of certain proposed U.S. munitions list exports), 319 (banning importation of South African agricultural products and food), 320 (prohibiting iron and steel imports), 321 (banning export of crude oil and petroleum products), and 323 (prohibiting sugar imports). The repealed sections have been replaced by broader prohibitions.

Subsection (e) amends section 3 of the Comprehensive Anti-Apartheid Act of 1986 to expand the definition of "loans" and add definitions of: "investment in South Africa," "U.S. person," "person subject to the jurisdiction of the United States," "goods

and technology," goods subject to the jurisdiction of the United States," and "foreign person." These amendments would take effect 180 days after enactment.

The definition of "loans" is expanded to include short-term trade financing and sales on open account. However, the definition does not include loans for which an agreement was entered into before April 20, 1988, or rescheduling of such loans as long as the rescheduling does not extend beyond one year at a time and does not provide new funds or credits to the South African entity.

Subsection (f) requires controlled South African entities (that is, corporations, partnerships, branches or other forms of business operations in South Africa owned by United States nationals), subject to the investment prohibitions under amended section 301, that employ more than 24 South Africans to notify employees of its disinvestment plans and to negotiate with employee unions or representatives regarding the terms of disinvestment, including pension benefits, severance pay and other related issues affecting employees.

Sec. 102—Prohibition Regarding Involvement in the South African Energy Sector

Section 102 amends the 1986 Act by adding a new section, 304, prohibiting involvement in the South African energy sector. Section 304 prohibits any United States person from transporting crude oil or refined petroleum products directly or indirectly to South Africa. During consideration of S. 2756, the committee struck the language under section 102, as originally introduced, that would have prohibited the Secretary of the Interior from issuing any oil or mineral lease to any United States national controlled by a foreign person that has investments in South Africa or exports crude oil or refined petroleum products to South Africa, and the language that would have provided for a one-time presidential waiver of the leasing provision. The decision to strike this language reflects the concern of some members of the committee that the extraterritorial aspects of the leasing provision could conceivably undermine efforts by the United States to reach agreements with its European allies for multilaterial sanctions against South Africa.

Sec. 103—Prohibition on Nuclear Assistance to South Africa

Section 103 amends section 307 of the 1986 Act, which prohibits nuclear trade with South Africa, to reflect the fact that all nuclear exports to South Africa would be banned under the trade embargo provisions of the bill. The amendment eliminates the waiver of the nuclear trade ban for South Africa's adherence to the Nuclear Non-Proliferation Treaty or adoption of full-scope International Atomic Energy Agency safeguards and the exception for nuclear assistance for humanitarian reasons to protect public health and safety as being inconsistent with comprehensive sanctions. However, the amended section 307 retains the language in the 1986 Act prohibiting the Secretary of Energy from authorizing persons to produce special nuclear material in South Africa.

Sec. 104—Prohibition on United States Intelligence and Military Cooperation with South Africa

Subsection (a) repeals section 322 of the 1986 Act, which prohibits cooperation with the armed forces of South Africa except for activities designed to facilitate the collection of necessary intelligence, and substitutes a new section 309. The new section prohibits any U.S. agency or entity, including the National Security Council and the Executive Office of the President, involved in intelligence activities from engaging in direct or indirect cooperation with the Government of South Africa or its armed forces except for activities reasonably designed to facilitate the collection of necessary intelligence and the exchange of information relating to the military activities or equipment in southern Africa of Cuban military forces or military forces of other Communist countries acting in conjunction with them. The new section specifically prohibits the transfer to the South African Government of information relating to South African opposition groups or individuals; political, economic or military conditions in any southern African country; or means of evading or circumventing United States sanctions. Section 309 prohibits the use of appropriated funds for cooperative activities prohibited by this section. This provision has the strong support of the Chairman and the Vice Chairman of the Senate Select Committee on Intelligence, as indicated by the letter in Appendix 1.

Subsection (b) repeals section 107 of the Intelligence Authorization Act for fiscal year 1987 (Public Law 99-569).

Sec. 105—Coordinator of South Africa Sanctions; Interagency Coordinating Committee on South Africa

This section adds two new sections, 607 and 608, to the 1986 Act. Section 607 establishes the position of coordinator of South Africa sanctions in the Department of State. The coordinator shall assist the Secretary of State in leading and coordinating all executive agency activities concerning compliance with and enforcement of the 1986 Act and monitoring of other nations' economic relations with South Africa. Section 607 also directs the Secretary of State to report annually to the Congress on compliance with and enforcement of the 1986 Act, economic relations of other nations with South Africa, and other related matters.

The new section 308 establishes an Interagency Coordinating Committee on South Africa to coordinate and monitor implementation of the Act. The committee shall be composed of the Secretaries of State, Treasury, Defense, Commerce, and Agriculture, the Attorney General, the United States Trade Representative, and the heads of other agencies as deemed necessary by the President.

Sec. 106—Namibia

This section amends sections 311 and 101 of the 1986 Act.

Subsection (a) amends section 311 to add the ending of South Africa's illegal occupation of Namibia and implementation of United Nations Resolution 435, which calls for the independence of Namibia, as one of six conditions South Africa must fulfill to have sanctions terminated. The six conditions relate to:

1. The release of Nelson Mandela and other political prisoners;
2. The repeal of the state of emergency and release of all detainees;
3. Unbanning democratic political parties and permits all South Africans to form political parties and participate in the political process;
4. The repeal of the Group Areas and Population Registration Acts;
5. Agreeing to enter into good faith negotiations with truly representatives members of the black community without preconditions; and
6. The new condition on Namibia.

Sanctions could be suspended or modified if the South African Government fullfills conditions 1 and 4 of the 5 remaining conditions.

Subsection (b) amends the political statement contained in section 101 to add the ending of South Africa's illegal occupation of Namibia and implementation on United Nations Resolution 435 as a major goal of the United States.

Sec. 107—Penalties

This section amends section 603 of the 1986 Act to provide additional penalties for violations of the Act.

Sec. 108—Assistance for Disadvantaged South Africans

This section continues the authorization for U.S. economic assistance for disadvantaged South Africans contained in the 1986 Act.

Subsection (a)(1) amends section 535 of the Foreign Assistance Act of 1961 to maintain a permanent authorization of up to $40 million for economic support for disadvantaged South Africans beginning with fiscal year 1989. Funds are to be derived from the economic support fund account and any other funds provided for economic development activities under the Foreign Assistance Act. Assistance is to be provided for activities consistent with the objectives of achieving an end to the apartheid system and the establishmend of a society based on nonracial principles. Such activities may include scholarships, promotion of participation in trade union and private enterprise activities, alternative education and community development programs, and training and other assistance for journalists.

Subsection (a)(2) amends section 535 of the Foreign Assistance Act to list the major trade union federations in South Africa and Namibia as examples of recipients of United States assistance to the labor movement.

Subsection (a)(3) adds a new subsection to section 535 of the Foreign Assistance Act providing that not less than $4 million of the amounts authorized shall be available for programs of refugee education and assistance for South Africans and Namibians. Funds provided under this section may not be used for assistance for individuals residing in areas under the control of or administered by the South West Africa People's Organization or the African National Congress and may not be administered through those organizations or any other group or individual affiliated with those

groups. The President may waive the limitation concerning the African National Congress if the determines that the African National Congress does not support violence against individuals who are not members of the South African military or who are not engaged in military or paramilitary operations against the African National Congress or other resistance organizations, or if he determines that the waiver is in the national security interests of the United States.

Subsection (b) of section 108 states that these amendments to the Foreign Assistance Act will become effective on October 1, 1988.

Sec. 109—Sense of Congress Regarding Antitrust Investigation of South African Diamond Cartel, Study of Diamond Origins, and Enforcement of Prohibition on Importation of South African Diamonds into the United States

This section expresses the sense ot Congress that the President should (1) direct the Attorney General to investigate the South African-controlled diamond cartel to determine if any enforcement action is appropriate under United States antitrust laws, (2) direct the Secretary of Commerce and Commissioner of Customs to investigate the feasibility of identifying the national origin of diamonds entering the United States, (3) ensure effective and rigorous enforcement of the prohibition contained in the bill on the importation into the United States of uncut diamonds of South African origin, and (4) ensure that implementation and enforcement of the diamond import prohibition do not interfere with the ability of any United States importer to import uncut diamonds whose origin is unknown to the importer.

The committee recognizes that uncut South African diamonds (approximately one-eighth of world production) are physically indistinguishable from those of other diamond-producing countries and that they often arrive at American ports commingled with uncut diamonds from other countries. While the committee supports enforcement of the import prohibitions of the Act, the committee does not intend that the interests of other diamond producing countries such as Botswana and Australia be adversely affected.

Sec. 110—Study of Measures To Reduce South Africa's Foreign Exchange Earnings From Gold

This section requires the President to conduct a study on possible actions by the United States to reduce South Africa's earnings from the sale of gold and to report to Congress within 180 days of enactment of this bill. The study is to be conducted in consultation with other industrialized nations and international financial institutions and is to include possible international and domestic consequences of any course of action and ways to minimize adverse effects on the U.S. gold mining industry.

Sec. 111—Report on South Africa's Involvement in International Terrorism

This section requires the Secretary of State to report to Congress within 90 days of enactment on the extent to which, if any, the South African Government has been involved in or supported acts of international terrorism.

Sec. 112—Technical and Conforming Amendments

This section contains technical amendments to conform the Table of Contents of the 1986 Act to the provisions of the bill. In addition, this section deletes the Presidential waiver authority contained in section 502 of the 1986 Act, which authorizes the lifting of any prohibition that would increase United States reliance on member or observer countries of the Soviet bloc's Council for Mutual Economic Assistance for the importation of coal or any strategic and critical material.

TITLE II—SANCTIONS AGAINST SOUTH AFRICAN IMPORTS INTO THE UNITED STATES

Sec. 201—Prohibitions on Imports From South Africa

Subsection (a) amends section 302 of the 1986 Act to prohibit the importation into the United States of any article grown, produced, extracted, or manufactured in South Africa and the importation of any article grown, produced, extracted, manufactured, or marketed by a parastatal organization of South Africa. These prohibitions cover articles exported directly from South Africa or transshipped through other countries. However, they do not apply to articles that have been "substantially transformed" outside of South Africa. According to Customs regulations (19 CFR 10.14(b)), "substantial transformation occurs when, as a result of manufacturing processes, a new and different article emerges, having a distinctive name, character, or use, which is different from that originally possessed by the article or material before being subject to the manufacturing process." Determinations as to whether or not a product is substantially transformed are made by the U.S. Customs Service. The mere finishing or modification of a partially or nearly complete foreign product does not constitute substantial transformation. Specific examples of substantially transformed goods that have originated in South Africa include: diamonds that have been cut and faceted in a third country, and feather dusters manufactured from South African ostrich feathers in a third country.

The following categories of imports are exempted from the prohibitions in amended section 302: strategic minerals that the President certifies are essential for the economy, public health, or defense of the United States and are not available from alternative reliable suppliers; publications, including books, newspapers, magazines, films, television programming, phonograph records, video and audio tape recordings, photographs, microfilm, microfiche, posters, and similar materials; and imports from South African business enterprises wholly-owned by persons economically and politically disadvantaged by apartheid. The committee does not intend the exemption for businesses wholly owned by persons economically and politically disadvantaged by apartheid to be utilized by white South African business interests, the South African Government, or homeland officials to evade the impact of United States sanctions, as in the creation of dummy or front companies. The exemption is intended to apply to imports from businesses wholly owned by blacks or other nonwhite South Africans. It is not the intent of the committee to require non-white South Africans to establish that they are disadvantaged in order to qualify for the ex-

emption. In the committee's view, they are by definition disadvantaged.

Section 302, as amended, prohibits the importation of uranium hexafluoride manufactured from South African uranium or uranium oxide.

Amended section 302 prohibits the importation of fish or seafood processed on shore in South Africa or aboard South African-flag or South African-owned vessels, or harvested by South African vessels and not incorporated as a part of a product in a third country or aboard a non-South African flag processing vessel. The import prohibition of amended section 302 does not cover fish or seafood products that are processed aboard non-South African flag or owned vessels; fish or seafood products which include fish harvested by South African vessels but processed by vessels of third countries for the international market; or fish or seafood products of third countries that are shipped from or stored in South Africa.

Under amended section 302, the term "parastatal organization" in South Africa means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa, but does not mean a corporation, partnership, or other entity that previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned.

Sec. 202—Multilateral Measures, Including Import Restrictions, To Dismantle Apartheid

This section amends title IV of the 1986 Act, dealing with multilateral measures to undermine apartheid. The title, as amended, retains the policy statement in section 401(a) that it is U.S. policy to seek international agreements to bring about the dismantling of apartheid.

Subsection (a) amends section 401(b)(1) of the 1986 Act to make mandatory the language in current law that encourages the President to seek such international agreements and to provide the President with flexibility in this regard. The President's October 1987 report to the Congress on progress in South Africa as well as testimony received by the committee from Administration witnesses indicate that the Administration has made no serious effort to seek multilateral sanctions agreements with U.S. allies. The committee believes that strengthening of this provision will better achieve the objectives of the 1986 Act and enhance the prospects for international pressure on the South African Government to dismantle apartheid. The President is to report within 180 days of enactment on his efforts to seek international agreements.

Subsection (b) amends section 401(e) of the 1986 Act to make mandatory the language in the Act that encourages the President to seek adoption of sanctions against South Africa similar to those imposed under this Act by the United Nations Security Council. Because the provision in the 1986 Act is not mandatory, the Administration has not supported such sanctions at the United Nations. In the committee's view, sanctions can be most effective when applied multilaterally to South Africa.

Subsection (c) amends section 402 of the 1986 Act by making mandatory and more precise the language of the Act authorizing the President to limit imports from other countries that take com-

mercial advantage of United States sanctions against South Africa. The amended section 402 directs the President to retaliate against foreign companies taking commercial advantage of U.S. sanctions. The President shall impose one or both of the following sanctions: (1) limit the importation into the United States of any product or service of the foreign person; or (2) restrict the foreign person from contracting with U.S. Government entities. This provision would take effect 180 days after enactment. The committee recognizes that the member states of the Southern African Development Coordination Conference [SADCC] are economically dependent upon South Africa. The committee does not intend the provisions of amended section 402 to be used in any way to adversely affect the SADCC states or their economies.

Sec. 203—Referral in the House of Joint Resolutions Pertaining to Import Restrictions

Section 203 amends section 602 of the 1986 Act relating to consideration in the House of joint resolutions introduced pursuant to the Act.

Sec. 204—Reports on United States Import From Member States of the Council for Mutual Economic Assistance

This section amends section 502 of the 1986 Act, relating to the lifting of prohibitions of the Act if such prohibitions increase U.S. dependency on a member or observer country of the Soviet bloc's Council for Mutual Economic Assistance, by striking the language of section 502 and substituting new language directing the President to report to the Congress every 30 days as to the average amounts of imports of coal or any strategic and critical material to the United States from each member country and observer country of the Council for Mutual Economic Assistance.

Sec. 205—Program to Reduce Dependence Upon Importation of Strategic Minerals From South Africa

This section amends section 504 of the 1986 Act, relating to the development of a program to reduce U.S. dependence on the importation of strategic minerals from South Africa, to require that the President report to Congress no later than April 1, 1989, and on February 1 each year thereafter, concerning progress in implementing such a program.

Sec. 206—Preventing Circumvention of United States Import Restrictions

This section requires that the President confer, with 180 days of enactment, with the "frontline states" (Angola, Botswana, Mozambique, Tanzania, Zambia, and Zimbabwe) regarding appropriate measures to prevent the circumvention by South Africa of import restrictions imposed under this Act.

TITLE III—GENERAL PROVISIONS

Sec. 301—Policy Toward Violence in South Africa

This section strikes section 108 of the 1986 Act dealing with necklacing and substitutes a new section expressing the sense of

the Congress that the President should denounce the use of violence by the South African Government and call upon it to terminate the state of emergency, urge the African National Congress to clearly condemn necklacing, and make it clear that the United States does not condone violence as a means of achieving or thwarting political change.

Sec. 302—Effective Date

This section stipulates that except as otherwise provided, the bill and amendments made by it shall take effect on the date of enactment.

COST ESTIMATE

Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate requires that committee reports on bills or joint resolutions contain a cost estimate for such legislation in the fiscal year it is reported and in each of the following 5 years. The Congressional Budget Office has prepared the following estimate for S. 2756.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 23, 1988.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate on S. 2756, Anti-Apartheid Act Amendments of 1988, as ordered reported by the Senate Committee on Foreign Relations on September 14, 1988.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

JAMES L. BLUM,
Acting Director.

Attachment.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2756.
2. Bill title: Anti-Apartheid Act Amendments of 1988.
3. Bill status: As ordered reported by the Senate Committee on Foreign Relations on September 14, 1988.
4. Bill purpose: The bill amends the Comprehensive Anti-Apartheid Act of 1986. Sections 101 and 201 impose a trade embargo on most imports and exports between the United States and South Africa. Section 101 also prohibits any United States person, including corporations, from holding any investment in South Africa.

Other sections of the bill establish a coordinator of South Africa sanctions within the State Department, and otherwise amend existing law in ways that are not expected to have a budget impact.

5. Estimated cost to the Federal Government:

[By fiscal year, in million of dollars]

	1989	1990	1991	1992	1993
Section 201: Net revenue effect	−3	−8	−9	−10	−11

Basis for Estimate

This estimate assumes enactment of this legislation by October 1, 1988. Provisions of the bill affecting investments and trade become effective 180 days after the enactment date of the bill, and would mostly affect businesses and capital investors. Except as discussed below, they would not affect federal, state, or local governments.

Section 201

Section 201 amends section 302 of the Anti-Aparthied Act by prohibiting the importation of most South African products. Customs duties are currently collected on many South African imports, therefore this prohibition would result in decreased revenues to the federal government. Section 201 provides that certain strategic minerals would continue to be imported from South Africa unless the President chooses to include them in the embargo. Based on information from the International Trade Commission, the estimated revenue loss would total $3 million in fiscal year 1989, and increase to $11 million by fiscal year 1993. If imports from other countries are substituted for banned products from South Africa, the revenue loss could be reduced.

Some costs to the federal government could occur if South Africa retaliates and bans the sale of strategic minerals that are difficult to find elsewhere. However, these specific costs cannot be estimated.

6. Estimated cost to State and local governments: State and local pension funds may be affected the investment provision in section 101 if their pension funds hold stocks in companies which currently operate in South Africa. Under Section 101, these companies must disinvest their holdings in South Africa. If disinvestment by the companies causes the value of their stock to drop, the value of pension funds will also fall. This may require added contributions to the pension funds by the state and local governments.

7. Estimate comparison: None.

8. Previous CB) estimate: CBO has prepared four previous cost estimates for bills imposing additional sanctions on South Africa, one on May 17, 1988 for the bill ordered reported by the House Committee on Foreign Affairs; one of June 8, 1988 for the bill ordered reported by the House Committee on Banking, Finance, and Urban Affairs; one on June 20, 1988 for the bill ordered reported by the House Committee on Armed Services; and another on August 1, 1988 for the bill ordered reported by the House Committee on Ways and Means. These House bills were numbered H.R. 1580.

Most sections of S. 2756 as ordered reported by the Senate Committee on Foreign Relations are similar to the corresponding sections in the bills ordered reported by the House Committee on Foreign Affairs, the House Committee on Banking, Finance, and

Urban Affairs, and the House Committee on Ways and Means. Some sections, however, are different. The House Banking Committee bill contains a provison banning imports having components or parts originating in South Africa and which are imported from third countries. S. 2756 does not contain this provision. Also, S. 2756 does not contain a provision included in the three other bills which would prohibit mineral lease sales to companies whose parent companies have holdings in South Africa. Finally, S. 2756 contains a provision which would exempt certain strategic minerals from the import embargo unless they were specifically included by the President. This provision is not contained in the other three bills, and would increase the revenues loss associated with the import embargo.

The bill reported by the House Committee on Armed Services is largely different from both S. 2756 and the other House bills. The Armed Services Committee bill does not include the strategic minerals exemption contained in S. 2756. Because, as noted above, this exemption would decrease the revenue loss associated with the import embargo, the estimated revenue loss associated with the Armed Services Committee bill is higher than the estimated revenue loss in S. 2756.

9. Estimate prepared by: Kent Christensen and Marianne Page.

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

Inflationary Impact Statement

The committee believes that S. 2756, as amended, will have no inflationary impact.

Evaluation of Regulatory Impact

All provisions of Rule XXVI paragraph 11 of the Standing Rules of the Senate not complied with were impractical because of time and the lack of necessary resources to evaluate the scope of the impact.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Comprehensive Anti-Apartheid Act of 1986

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SEC. 3. * * *

* * * * * * *

[(3) the term "loan"—

[(A) means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including—

[(i) overdrafts,

[(ii) currency swaps,

[(iii) the purchase of debt or equity securities issued by the Government of South Africa or a South African entity on or after the date of enactment of this Act,

[(iv) the purchase of a loan made by another person,

[(v) the sale of financial assets subject to an agreement to repurchase, and

[(vi) a renewal or refinancing whereby funds or credits are transferred or extended to the Government of South Africa or a South African entity, and

[(B) does not include—

[(i) normal short-term trade financing, as by letters of credit or similar trade credits;

[(ii) sales on open account in cases where such sales are normal business practice; or

[(iii) rescheduling of existing loans, if no new funds or credits are thereby extended to a South African

[(4) the term "new investment"—

[(A) means—

[(i) a commitment or contribution of funds or other assets, and

[(ii) a loan or other extension of credit, and

[(B) does not include—

[(i) the reinvestment of profits generated by a controlled South African entity into that same controlled South African entity or the investment of such profits in a South African entity;

[(ii) contributions of money or other assets where such contributions are necessary to enable a controlled South African entity to operate in an economically sound manner, without expanding its operations; or

[(iii) the ownership or control of a share or interest in a South African entity or a controlled South African entity or a debt or equity security issued by the Government of South Africa or a South African entity before the date of enactment of this Act, or the transfer or acquisition of such a share, interest, or debt or equity security, if any such transfer or acquisition does not result in a payment, contribution of funds or assets, or credit to a South African entity, a controlled South African entity, or the Government of South Africa;]

(3) the term "investment in South Africa" means—

(A) a commitment of funds or other assets (in order to earn a financial return) to a South African entity, including—

(i) a loan or other extension of credit made to a South African entity, or security given for the debts of an entity;

(ii) the beneficial ownership or control of a share or interest in a South African entity, or of a bond or other debt instrument issued by such an entity; or

(iii) capital contributions in money or other assets to a South African entity; or

(B) the control of a South African entity in cases in which subparagraph (A) does not apply;

(4) the term "loan"—

(A) means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including—

(i) overdrafts;

(ii) currency swaps;

(iii) the purchase of debt or equity securities issued by the Government of South Africa or a South African entity on or after the date of enactment of this Act;

(iv) the purchase of a loan made by another person;

(v) the sale of financial assets subject to an agreement to repurchase;

(vi) a renewal or refinancing whereby funds or credits are transferred or extended to the Government of South Africa or a South African entity;

(vii) short-term trade financing, as by letters of credit or similar trade credits; and

(viii) sales on open account in cases where such sales are normal business practice;

(B) does not include any loan for which an agreement was entered into before April 20, 1988, nor a subsequent rescheduling of any such loan provided that any new rescheduling arrangements do not extend beyond one year at a time, and provided further that no new funds or credits are

thereby extended to a South African entity or the Government of South Africa;

* * * * * * *

(8) * * *

* * * * * * *

(B) any partnership, corporation, or other business association which is organized under the laws of South Africa; [and]

(9) the term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United [States.] *States; and*

(10) the terms "United States person" and "person subject to the jurisdiction of the United States " mean—

(A) any person, wherever located, who is a citizen or resident of the United States;

(B) any person actually within the United States;

(C) any corporation organized under the laws of the United States or of any State, territory, possession, or district of the United States; and

(D) any partnership, association, corporation, or other organization, wherever organized or doing business, that is owned or controlled by persons specified in subparagraphs (A), (B), or (C) of this paragraph;

(11) the terms "goods" and "technology" have the meanings given such terms by section 16 of the Export Administration Act of 1979;

(12) the term "goods subject to the jurisdiction of the United States " includes good that are the direct product of techology of United States origin; and

(13) the term "foreign person"—

(A) means any person who is not a United States person or subject to the jurisdiction of the United States, and

(B) does not include any government or any agency or other entity or instrumentality thereof (including a government-sponsored agency) unless any such agency, entity, or instrumentality is a business enterprise.

* * * * * * *

TITLE I—POLICY OF THE UNITED STATES WITH RESPECT TO ENDING APARTHEID

POLICY TOWARD THE GOVERNMENT OF SOUTH AFRICA

SEC. 101. (a) * * *

* * * * * * *

(5) negotiate with representatives of all racial groups in South Africa the future political system in South Africa; [and]

(6) end military and paramilitary activities aimed at neighboring [states.] *states; and*

(7) end South Africa's illegal occupation of Namibia and implement United Nations Resolution 435 which calls for the establishment of an independent Namibia.

* * * * * * *

[POLICY TOWARD NECKLACING

[SEC. 108. It is the sense of the Congress that the African National Congress should strongly condemn and take effective actions against the execution by fire, commonly known as "necklacing", of any person in any country.]

POLICY TOWARD VIOLENCE IN SOUTH AFRICA

SEC. 108. (a) The Congress finds that—

(1) the use of violence for political purposes has increased over the last four years in South Africa;

(2) the South African Government has resorted to force as a means of stemming anti-apartheid protests and activities;

(3) the South African Government has maintained a nationwide state of emergency since June 1986 and granted the security and police forces widespread powers under state of emergency regulations;

(4) more than 30,000 people were detained in 1986 and 1987, many of them children under the age of 18, and several were the victims of torture and brutality at the hands of South African Government officials;

(5) over 500 South Africans died as a result of a heinous practice commonly known as "necklacing", in which an individual is executed by placing a tire filled with gasoline around the neck;

(6) violent clashes have occurred between supporters of different anti-apartheid organizations in South Africa, in some cases leaving hundreds dead; and

(7) a growing number of bombings have taken place, many of them claiming the lives of civilians in white areas.

(b) It is the sense of the Congress that the President should—

(1) denunciate the use of violence by the South African Government and call upon the South African Government to immediately terminate the nationwide state of emergency and release all detainees;

(2) urge the African National Congress to issue a clear condemnation of the practice of "necklacing" and to take effective actions against necklacing of any person in any country; and

(3) clearly state that the United States does not condone the use of violence as a means of achieving or thwarting political change in South Africa.

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TITLE II—MEASURES TO ASSIST VICTIMS OF APARTHEID

SCHOLARSHIPS FOR THE VICTIMS OF APARTHEID

SEC. 201. (a) * * *

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[PARTICIPATION OF SOUTH AFRICA IN AGRICULTURAL EXPORT CREDIT AND PROMOTION PROGRAMS

[SEC. 212. Notwithstanding any other provision of this Act or any other provision of law, the Secretary of Agriculture may permit South Africa to participate in agricultural export credit and promotion programs conducted by the Secretary at similar levels, and under similar terms and conditions, as are participated in by other countries that have traditionally purchased United States agricultural commodities and the products thereof.]

TITLE III—MEASURES BY THE UNITED STATES TO UNDERMINE APARTHEID

[PROHIBITION ON THE IMPORTATION OF KRUGERRANDS

[SEC. 301. No person, including a bank, may import into the United States any South African krugerrand or any other gold coin minted in South Africa or offered for sale by the Government of South Africa.]

PROHIBITION ON INVESTMENT IN SOUTH AFRICA

SEC. 301. (a) Subject to subsections (b) and (c), a United States person may not purchase, acquire, own, or hold any investment in South Africa.

(b) The prohibition under subsection (a) shall not apply to any investment in a business enterprise owned and controlled by South Africans economically and politically disadvantaged by apartheid where after the investment such business enterprise is not less than 90 percent owned by, and is under the control of, South Africans economically and politically disadvantaged by apartheid.

(c)(1) Notwithstanding subsection (a), any individual described in paragraph (2), may continue to own and hold investments in South Africa during any period and to the extent that such investments are considered South African emigrant non-resident assets and subject to restrictions on their transfer or disposition under the exchange control regulations of the Government of South Africa (promulgated pursuant to the Currency and Exchange Act of 1933 and as in effect on June 2, 1988) which limit the ability of such an individual to comply with such prohibitions under subsection (a).

(2) An individual, for purposes of paragraph (1), is an individual who, on the date of the enactment of the Anti-Apartheid Act Amendments of 1988, is—

(A) a former citizen or resident of South Africa; and

(B)(i) a citizen of the United States; or

(ii) an alien lawfully admitted for permanent residence in the United States.

[PROHIBITION ON THE IMPORTATION OF MILITARY ARTICLES

[SEC. 302. No arms, ammunition, or military vehicles produced in South Africa or any manufacturing data for such articles may be imported into the United States.]

PROHIBITION ON IMPORTS INTO THE UNITED STATES FROM SOUTH AFRICA

SEC. 302. (a) No article which is grown, produced, extracted, or manufactured in South Africa may be imported into the United States; and no article which is grown, produced, extracted, manufactured, or marketed by a parastatal organization of South Africa may be imported into the United States.

(b) The prohibition of subsection (a) shall not apply to the import of—

(1) any strategic mineral (including any ferroalloy thereof) with respect to which the President certifies to Congress for purposes of this Act that the quantities of such mineral which are essential for the economy, public health, or defense of the United States are not available from alternative reliable suppliers; and

(2) publications, including books, newspapers, magazines, films, television programming, phonograph records, video and audio tape recordings, photographs, microfilm, microfiche, posters, and similar materials.

(c) The prohibition under subsection (a) shall not apply to imports from business enterprises in South Africa that are wholly-owned by persons economically and politically disadvantaged by apartheid.

(d) The prohibition under subsection (a) includes—

(1) uranium hexafluoride that has been manufactured from South African uranium or uranium oxide; and

(2) fish or seafood—

(A) processed on shore in South Africa or processed aboard South African-flag or South African-owned vessels, or

(B) harvested by South African vessels and not incorporated as a part of a product in a third country or aboard a non-South African flag processing vessel.

(e) For purposes of this section, the term "parastatal organization" means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa, but does not mean a corporation, partnership, or other entity which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned.

[PROHIBITION ON THE IMPORTATION OF PRODUCTS FROM PARASTATAL ORGANIZATIONS

[SEC. 303. (a) Notwithstanding any other provision of law, no article which is grown, produced, manufactured by, marketed, or otherwise exported by a parastatal organization of South Africa may be imported into the United States, (1) except for agricultural products during the 12-month period from the date of enactment; and (2) except for those strategic minerals for which the President has certified to the Congress that the quantities essential for the econo-

my or defense of the United States are unavailable from reliable and secure suppliers and except for any article to be imported pursuant to a contract entered into before August 15, 1986: *Provided,* That no shipments may be received by a national of the United States under such contract after April 1, 1987.

[(b) For purposes of this section, the term "parastatal organization" means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa, but does not mean a corporation, partnership, or entity which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned.

[(c) Nothing in this section prohibits the importation into the United States of any publication, including any book, newspaper, magazine, film, phonograph record, tape recording, photograph, microfilm, microfiche, poster, or any other similar material.

[PROHIBITION ON COMPUTER REPORTS TO SOUTH AFRICA

[SEC. 304. (a) No computuers, computer software, or goods or technology intended to manufacture or service computers may be exported to or for use by any of the following entities of the Government of South Africa:

[(1) The military.

[(2) The police.

[(3) The prison system.

[(4) The national security agencies.

[(5) ARMSCOR and its subsidiaries or the weapons research activities of the Council for Scientific and Industrial Research.

[(6) The administering authorities for controlling the movements of the victims of apartheid.

[(7) Any apartheid enforcing agency.

[(8) Any local, regional, or homelands government entity which performs any function of any entity described in paragraphs (1) through (7).

[(b)(1) Computuers, computer software, and goods or technology intended to service computers may be exported, directly or indirectly, to or for use by an entity of the Government of South Africa other than those set forth in subsection (a) only if a system of end use verification is in effect to ensure that the computers involved will not be used for any function of any entity set forth in subsection (a).

[(2) The Secretary of Commerce may prescribe such rules and regulations as may be necessary to carry out this section.]

PROHIBITION OF EXPORTS TO SOUTH AFRICA FROM THE UNITED STATES

SEC. 303. (a) No goods or technology subject to the jurisdiction of the United States may be exported, or re-exported, to South Africa. No goods or technology may be exported, or re-exported, to South Africa by any person subject to the jurisdiction of the United States.

(b) The prohibitions under subsection (a) shall not apply to—

(1) publications, including books, newspapers, magazines, films, television programming, phonograph records, video and audio tape recordings, photographs, microfilm, microfiche, posters, and similar materials;

(2) donations of articles intended to relieve human suffering, such as food, clothing, and medicine and medical supplies intended strictly for medical purposes;

(3) commercial sales of agricultural commodities and products; and

(4) goods and technology for use in the gathering or dissemination of information by news media organizations subject to the jurisdiction of the United States which provide an assurance to the Secretary of State that such goods and technology will not be used, leased, sold, or transferred to any South African entity.

(c) The prohibitions under subsection (a) shall not apply to any goods that are the direct product of technology of United States origin under a written agreement entered into on or before April 20, 1988, and that are exported prior to the date which is one year after the date of the enactment of the Anti-Apartheid Act Amendments of 1988.

(d) The prohibitions under subsection (a) shall not apply to—

(1) economic assistance or human rights programs for disadvantaged South Africans, South African blacks or other nonwhite South Africans, or victims of apartheid in South Africa pursuant to the Foreign Assistance Act of 1961, the Export-Import Bank Act of 1945, or any other provision of law authorizing economic or human rights assistance programs; and

(2) contributions to charitable organizations engaged in social welfare, public health, religious, educational, and emergency relief activities in South Africa.

RESTRICTIONS REGARDING INVOLVEMENT IN THE SOUTH AFRICAN ENERGY SECTOR

SEC. 304. A United States person may not, directly or through an affiliate, provide transport to South Africa of a commercial quantity of crude oil or refined petroleum products. The prohibition under this subsection includes transport on a vessel of United States registry and transport on a vessel owned, directly or indirectly, by a United States person.

* * * * * * *

[PROHIBITIONS ON NUCLEAR TRADE WITH SOUTH AFRICA

[SEC. 307. (a) Notwithstanding any other provision of law—

[(1) the Nuclear Regulatory Commission shall not issue any license for the export to South Africa of production or utilization facilities, any source or special nuclear material or sensitive nuclear technology, or any component parts, items, or substances which the Commission has determined, pursuant to section 109b of the Atomic Energy Act, to be especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes;

[(2) the Secretary of Commerce shall not issue any license for the export to South Africa of any goods or technology which have been determined, pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, to be of significance for nuclear explosive purposes for use in, or judged by the Presi-

dent to be likely to be diverted to, a South African production or utilization facility;

[(3) the Secretary of Energy shall not, under section 57b.(2) of the Atomic Energy Act, authorize any person to engage, directly or indirectly, in the production of special nuclear material in South Africa; and

[(4) no goods, technology, source or special nuclear material, facilities, components, items, or substances referred to in clauses (1) through (3) shall be approved by the Nuclear Regulatory Commission or an executive branch agency for retransfer to South Africa.

unless the Secretary of State determines and certifies to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that the Government of South Africa is a party to the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow on July 1, 1968, or otherwise maintains International Atomic Energy Agency safeguards on all its peaceful nuclear activities, as defined in the Nuclear Non-Proliferation Act of 1978.

[(b) Nothing in this section shall preclude—

[(1) any export, retransfer, or activity generally licensed or generally authorized by the Nuclear Regulatory Commission or the Department of Commerce or the Department of Energy; or

[(2) assistance for the purpose of developing or applying International Atomic Energy Agency or United States bilateral safeguards, for International Atomic Energy Agency programs generally available to its member states, for reducing the use of highly enriched uranium in research or test reactors, or for other technical programs for the purpose of reducing proliferaton risks, such as programs to extend the life of reactor fuel and activities envisaged by section 223 of the Nuclear Waste Policy Act of 1982 or which are necessary for humanitarian reasons to protect the public health and safety.

[(c) The prohibitions contained in subsection (a) shall not apply with respect to a particular export, retransfer, or activity, or a group of exports, retransfers, or activities, if the President determines that to apply the prohibitions would be seriously prejudicial to the achievement of United States nonproliferation objectives or would otherwise jeopardize the common defense and security of the United States and, if at least 60 days before the initial export, retransfer, or activity is carried out, the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth that determination, together with his reasons therefor.]

PROHIBITION ON NUCLEAR ASSISTANCE TO SOUTH AFRICA

SEC. 307. Notwithstanding any other provision of law, the Secretary of Energy shall not, under section 57b.(2) of the Atomic Energy Act of 1954, authorize any person to engage, directly or indirectly, in the production of special nuclear material in South Africa.

* * * * * * *

[PROHIBITION ON IMPORTATION OF URANIUM, COAL, AND TEXTILES FROM SOUTH AFRICA

[SEC. 309. (a) Notwithstanding any other provision of law, no—

[(1) uranium ore,

[(2) uranium oxide,

[(3) coal, or

[(4) textiles,

that are produced or manufactured in South Africa may be imported into the United States.

[(b) For purposes of this section, the term "textiles" does not include any article provided for in item 812.10 or 813.10 of the Tariff Schedules of the United States.

[(c) This section shall take effect 90 days after the date of enactment of this Act.]

PROHIBITION ON UNITED STATES INTELLIGENCE AND MILITARY COOPERATION WITH SOUTH AFRICA

SEC. 309. (a)(1) No agency or entity of the United States involved in intelligence activities may engage in any form of cooperation, direct or indirect, with the Government of South Africa except activities which are reasonably designed to facilitate the collection of necessary intelligence.

(b) No agency or entity of the United States involved in intelligence activities may provide any intelligence information to the Government of South Africa which relates, directly or indirectly, to—

(1) a South African opposition group, movement, organization or individual, wherever based; or

(2) political, economic, or military conditions in any southern African country.

(c) The prohibitions contained in subsection (b)(2) shall not apply to the conduct of diplomatic activities or to intelligence information concerning the military activities or equipment in southern Africa of Cuban military forces or of another Communist country acting in concert with Cuban military forces.

(d) Any anticipated change in any form of cooperation with the Government of South Africa shall be considered a significant anticipated intelligence activity for purposes of section 501 of the National Security Act of 1947.

(e) No agency or entity of the United States may provide any information to the Government of South Africa for the purpose, or which have the effect, of assisting South Africa to evade any sanctions or prohibitions imposed by this Act.

(f) Funds authorized to be appropriated or otherwise made available by the Congress (including funds specified in a classified schedule of authorizations or appropriations) may not be obligated or expended by any agency or entity of the United States for any expenses related to any cooperation prohibited by this section.

[PROHIBITION ON INVESTMENT IN SOUTH AFRICA

[SEC. 310. (a) No national of the United States may, directly or through another person, make any new investment in South Africa.

[(b) The prohibition contained in subsection (a) shall take effect 45 days after the date of enactment of this Act.

[(c) The prohibition contained in this section shall not apply to a firm owned by black South Africans.]

TERMINATION OF CERTAIN PROVISIONS

SEC. 311. (a) This title and sections *402(a),* 501(c) and 504(b) shall terminate if the Government of South Africa—

(1) releases all persons persecuted for their political beliefs or detained unduly without trial and Nelson Mandela from prison;

(2) repeals the state of emergency in effect on the date of enactment of this Act and releases all detainees held under such state of emergency;

(3) unbans democratic political parties and permits the free exercise by South Africans of all races of the right to form political parties, express political opinions, and otherwise participate in the political process;

(4) repeals the Group Areas Act and the Population Registration Act and institutes no other measures with the same purposes; [*and*]

(5) agrees to enter into good faith negotiations with truly representative members of the black majority without [preconditions.] *; and*

(6) ends the illegal occupation of Namibia and implements United Nations Resolution 435, which calls for the independence of Namibia.

(b) The President may suspend or modify any of the measures required by this title or sections *402(a) and* 501(c) or section 504(b) thirty days after he determines, and so reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, that the Government of South Africa has—

(1) taken the action described in paragraph (1) of subsection (a),

[(2) taken three of the four actions listed in paragraphs (2) through (5) of subsection (a), and]

(2) taken four of the five actions listed in paragraphs (2) through (6) of subsection (a), and

* * * * * * *

[PROHIBITION ON EXPORT OF ITEMS ON THE UNITED STATES MUNITIONS LIST

[SEC. 317. (a) Except as provided in subsection (b), no item contained on the United States Munitions List which is subject to the jurisdiction of the United States may be exported to South Africa.

[(b) Subsection (a) does not apply to any item which is not covered by the United Nations Security Council Resolution 418 of November 4, 1977, and which the President determines is exported solely for commercial purposes and not exported for use by the armed forces, police, or other security forces of South Africa or for the other military use.

[(c) The President shall prepare and submit to Congress every six months a report describing any license issued pursuant to subsection (b).

[NOTIFICATION OF CERTAIN PROPOSED UNITED STATES MUNITIONS LIST EXPORTS

[SEC. 318. (a) Notwithstanding any other provision of this Act, the President shall—

[(1) notify the Congress of his intent to allow the export to South Africa of any item which is on the United States Munitions List and which is not covered by the United Nations Security Council Resolution 418 of November 4, 1977, and

[(2) certify that such item shall be used solely for commercial purposes and not exported for use by the armed forces, police, or other security forces of South Africa or for other military use.

[(b)(1) No item described in subsection (a) may be exported if the Congress, within 30 days of continuous session after a certification is made under subsection (a)(2), enacts, in accordance with section 602 of this Act, a joint resolution disapproving such export.

[(2) For purposes of paragraph (1), the term "continuous session" is used within the meaning of section 906(b) of title 5, United States Code.

[PROHIBITION ON IMPORTATION OF SOUTH AFRICAN AGRICULTURAL PRODUCTS AND FOOD

[SEC. 319. Notwithstanding any other provision of law, no—

[(1) agricultural commodity or product or any byproduct or derivative thereof, or

[(2) article that is suitable for human consumption, that is a product of South Africa may be imported into the United States after the date of enactment of this Act.

[PROHIBITION ON IMPORTATION OF IRON AND STEEL

[SEC. 320. Notwithstanding any other provision of law, no iron or steel produced, or iron ore extracted, in South Africa may be imported into the United States, except that any such commodity may be imported pursuant to a contract entered into before August 15, 1986, if no shipment of such commodity is imported by a national of the United States under such contract after December 31, 1986.

[PROHIBITION ON EXPORTS OF CRUDE OIL AND PETROLEUM PRODUCTS

[SEC. 321. (a) No crude oil or refined petroleum product which is subject to the jursidiction of the United States may be exported to South Africa, and no crude oil or refined petroleum product may be exported to South Africa by a person subject to the jurisdiction of the United States.

[(b) Subsection (a) does not apply to any export pursuant to a contract entered into before the date of enactment of this Act, if no shipment of such export is made under such contract after December 31, 1986.

[PROHIBITION ON COOPERATION WITH THE ARMED FORCES OF SOUTH AFRICA

[SEC. 322. No agency or entity of the United States may engage in any form of cooperation, direct or indiret, with the armed forces of the Government of South Africa, except for activities which are reasonably designed to facilitate the collection of necessasry intelligence. Each such activiity shall be considered a significant anticipated intelligence activity for purposes of section 501 of the National Security Act of 1947.

[PROHIBITIONS ON SUGAR IMPORTS

[SEC. 323. (a)(1) Notwithstanding any other provision of law, no sugars, sirups, or molasses that are products of the Republic of South Africa may be imported into the United States after the date of enactment of this Act.

[(2) The aggregate quantity of sugars, sirups, and molasses that—

[(A) are products of the Philippines, and

[(B) may be imported into the United States (determined without regard to this paragraph) under any limitation imposed by law on the quantity of all sugars, sirups, and molasses that may be imported into the United States during any period of time occurring after the date of enactment of this Act,

shall be increased by the aggregate quantity of sugars, sirups, and molasses that are products of the Republic of South Africa which may have been imported into the United States under such limitation during such period if this section did not apply to such period.

[(b)(1) Paragraph (c)(i) of headnote 3 of subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States is amended—

[(A) by striking out "13.5" in the item relating to the Philippines in the table and inserting in lieu thereof "15.8", and

"(A) the precentage allocation made t the Philippines under this paragraph may not be reduced, and

[(B) by striking out the item relating to the Republic of South Africa in the table.

[(2) Paragraph (c) of headnote 3 of subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States is amended by adding at the end thereof the following new subparagraph:

["(iii) Notwithstanding any authority given to the United States Trade Representative under paragraphs (e) and (g) of this headnote—

["(A) the percentage allocation made to the Philippines under this paragraph may not be reduced, and

["(B) no allocation may be made to the Republic of South Africa,

in allocating any limitation imposed under any paragraph of this headnote on the quantity of sugars, sirups, and molasses described in items 155.20 and 155.30 which may be entered.".]

TITLE IV—MULTILATERAL MEASURES TO UNDERMINE APARTHEID

NEGOTIATING AUTHORITY

SEC. 401. (a) * * *

* * * * * * * *

[(b)(1) Negotiations to reach international cooperative agreements with the other industrialized democracies of South Africa on measures to bring about the complete dismantling of apartheid should begin promptly and should be concluded not later than 180 days from the enactment of this Act. During this period, the President or, at his direction, the Secretary of State should convene an international conference of the other industrialized democracies in order to reach cooperative agreements to impose sanctions against South Africa to bring about the complete dismantling of apartheid.

[(2) The President shall, not less than 180 days after the date of enactment of this Act, submit to the Congress a report containing—

[(A) a description of United States efforts to negotiate multilateral measures to bring about the complete dismantling of apartheid; and

[(B) a detailed description of economic and other measures adopted by the other industrialized countries to bring about the complete dismantling of apartheid, including an assessment of the stringency with which such measures are enforced by those countries.]

(b)(1) The President, or at his direction, the Secretary of State (in consultation with the United States Trade Representative), shall, consistent with the policy under subsection (a), confer with the other industrialized democracies in order to reach cooperative agreements to impose sanctions against South Africa to bring about the complete dismantling of apartheid.

(2) Before the 180th day after the date of the enactment of the Anti-Apartheid Act Amendments of 1988, the President shall submit a report to the Congress containing—

(A) a description of United States efforts under paragraph (1) to implement multilateral measures to bring about the complete dismantling of apartheid;

(B) his evaluation regarding whether the efforts described in subparagraph (A) have been successful in achieving multilateral measures to bring about the complete dismantling of apartheid; and

(C) if the efforts described in subparagraph (A) have been successful, a detailed description of economic and other measures adopted by the other industrialized countries to bring about the complete dismantling of apartheid, including an assessment of the stringency with which such measures are enforced by those countries.

* * * * * * * *

(e) [It is the sense of the Congress that the President should] *The President shall* instruct the Permanent Representative of the United States to the United Nations to propose that the United

Nations Security Council, pursuant to Article 41 of the United Nations Charter, impose measures against South Africa of the same type as are imposed by this Act.

[LIMITATION ON IMPORTS FROM OTHER COUNTRIES

[Sec. 402. The President is authorized to limit the importation into the United States of any product or service of a foreign country to the extent to which such foreign country benefits from, or otherwise takes commercial advantage of, any sanction or prohibition imposed by or under this Act.]

LIMITATION ON IMPORTS FROM AND CONTRACTING WITH CERTAIN FOREIGN PERSONS

SEC. 402. (a)(1) Subject to subsection (b), effective on and after the 180th-day after the date of the enactment of the Anti-Apartheid Act Amendments of 1988 (or the 360th day after such date if the evaluation of the President under section 401(b)(2)(B) is affirmative), to the extent that a foreign person takes significant commercial advantage of any sanction or prohibition imposed by or under this Act, the President shall impose not less than one of the penalties under paragraph (2).

(2) The President may impose one or both of the following penalties under paragraph (1):

(A) Limit the importation into the United States of any product or service of the foreign person.

(B) Restrict the foreign person from contracting with departments, agencies, and instrumentalities of the United States Government.

(3) For purposes of applying this subsection—

(A) the European Community shall be treated as being a single industrialized democracy; and

(B) any limitation imposed under paragraph (2)(A) shall, to the extent possible, offset the value of the significant commercial advantage obtained by the foreign person.

(b)(1) The President may waive the application of subsection (a) with respect to foreign persons of an industrialized democracy that is party to an agreement that has entered into force with respect to the United States under section 401.

(2) The President shall revoke, for such time and subject to such conditions as he considers appropriate, a waiver made under paragraph (1) if the President finds that the industrialized democracy that is party to the agreement in force under section 401 is not adequately enforcing the measures provided for under the agreement.

(3) The annual report required under section 607(b)(4) shall include, with respect to the period covered by the report—

(A) an evaluation of the extent to which the import retrictions, if any, provided for under each agreement in force under section 401 are being enforced by the industrialized democracy concerned and the effect of such enforcement; and

(B) the reasons for each waiver and revocation made under paragraphs (1) and (2).

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TITLE V—FUTURE POLICY TOWARD SOUTH AFRICA

ADDITIONAL MEASURES

Sec. 501. (a) * * *

* * * * * * *

(c) If the President determines that significant progress has not been made by the Government of South Africa in ending the system of apartheid and establishing a nonracial democracy, the President shall include in the report required by subsection (b) a recommendation on which of the following additional measures *or other measures* should be imposed:

(1) a prohibition on military assistance to those countries that the report required by section 508 identifies as continuing to circumvent the international embargo on arms and military technology to South Africa; *and*

[(2) a prohibition on the importation of diamonds from South Africa;]

[(3)] *(2)* a prohibition on United States banks accepting, receiving, or holding deposit accounts from South African nationals[; and].

[(4) a prohibition on the importation into the United States of strategic minerals from South Africa.]

[LIFTING OF PROHIBITIONS

[SEC. 502. (a) Notwithstanding any other provision of this Act, the President may lift any prohibition contained in this Act imposed against South Africa if the President determines, after six months from the date of the imposition of such prohibition, and so reports to Congress, that such prohibition would increase United States dependence upon any member country or observer county of the Council for Mutual Economic Assistance (C.M.E.A.) for the importation of coal or any strategic and critical material by an amount which exceeds by weight the average amounts of such imports from such country during the period 1981 through 1985.

[(b)(1) Not later than 30 days after the date of enactment of this Act, the Secretary of Commerce shall prepare and transmit to the Congress a report setting forth for each country described in subsection (a)—

[(A) the average amount of such imports from such country during the period of 1981 through 1985; and

[(B) the current amount of such imports from such country entering the United States.

[(2) Thirty days after transmittal of the report required by paragraph (1), and every thirty days thereafter, the President shall prepare and transmit to the Congress a report containing the information described in paragraph (1)(B).]

REPORTS ON UNITED STATES IMPORTS FROM MEMBER STATES OF THE COUNCIL FOR MUTUAL ECONOMIC ASSISTANCE

SEC. 502. Beginning 30 days after the date of the enactment of the Anti-Apartheid Act Amendments of 1988, and every 30 days thereafter, the President, through the Secretary of Commerce, shall prepare

and transmit to the Congress a report setting forth the average amounts of imports of coal or any strategic and critical material entering the United States from each member country and observer country of the Council for Mutual Economic Assistance (C.M.E.A.)

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REPORT ON SOUTH AFRICAN IMPORTS

SEC. 504. (a) * * *

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[(b) The President shall develop a program which reduces the dependence, if any, of the United States on the importation from South Africa of the materials identified in the report submitted under subsection (a).]

(b)(1) The President shall develop a program to reduce the dependence, if any, of the United States on the importation from South Africa of the materials identified in the report submitted under subsection (a). In the development of such program, the President shall determine (in consultation with knowledgeable individuals in industry, government, and academia) whether, to what extent, and in what time period, adequate quantities of such materials could reasonably be obtained from (A) alternative reliable domestic and foreign sources, and (B) improved and effective methods of manufacturing, substitution, conservation, recovery, and recycling. Such determination shall include consideration of the quality and cost of such materials.

(2) Not more than 270 days after the date of the enactment of the Anti-Apartheid Act of Amendments of 1988, the President shall submit a report to the Congress concerning the program under paragraph (1), particularly the respective roles in the implementation of such program of the Federal Government, users of such materials, and other affected persons. On February 1, 1990, and on February 1 of each subsequent year until the termination of sanctions under this Act, the President shall submit a report the to Congress concerning progress in implementing such program.

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TITLE VI—ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

REGULATORY AUTHORITY

SEC. 601. * * *

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CONGRESSIONAL PRIORITY PROCEDURES

SEC. 602. (a)(1) The provisions of this subsection apply to the consideration in the House of Representatives of a joint resolution under sections 311(b), [318(b),] 401(d), and 501(d).

[(2) A joint resolution shall, upon introduction, be referred to the Committee on Foreign Affairs of the House of Representatives.]

(2)(A) A joint resolution, other than a joint resolution referred to in subparagraph (B), shall, upon introduction, be referred to the Committee on Foreign Affairs of the House of Representatives.

(B) A joint resolution under—

(i) section 311(b), if the joint resolution suspends or modifies any import restriction in effect under title III, section 402(a), 501(c), or 504(b);

(ii) section 401(d), if the joint resolution approves an agreement encompassing any import restriction measure; or

(iii) section 501(d), if the joint resolution would enact any import restriction under section 501(c);

shall, upon introduction, be jointly referred to the Committee on Foreign Affairs and the Committee on Ways and Means of the House of Representatives.

* * * * * * *

(b)(1) The provisions of this subsection apply to the consideration in the Senate of a joint resolution under section 311(b), [318(b),] 401(d), or 501(d).

* * * * * * *

(c) For purposes of this subsection, the term "joint resolution" means only—

(1) in the case of section 311(b), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the report described in section 311(b) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on the report of the President containing the determination required by section 311(b) of the Comprehensive Anti-Apartheid Act of 1986, disapproves of such determination.", with the date of the receipt of the report inserted in the blank;

[(2) in the case of section 318(b), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives a certification of the President pursuant to section 318(b) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on a certification of the President under section 318(b)(2) of the Comprehensive Anti-Apartheid Act of 1986, approves the President's certification", with the date of the receipt of the certification inserted in the blank;]

[(3)] *(2)* in the case of section 401(d)(3), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the document described in section 401(d)(2) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on the text of the international agreement described in section 401(d)(3) of the Comprehensive Anti-Apartheid Act of 1986, approves of such agreement.", with the date of the receipt of the text of the agreement inserted in the blank; and

[(4)] *(3)* in the case of section 501(d), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the determination of the President pursuant to section 501(c) and for which the matter

after the resolving clause reads as follows: "That the Congress, having received on a determination of the President under section 501(c) of the Comprehensive Anti-Apartheid Act of 1986, approves the President's determination.", with the date of the receipt of the determination inserted in the blank.

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ENFORCEMENT AND PENALTIES

SEC. 603. (a)* * *

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(b) Except as provided in subsection (d)—

(1) any person that violates the provisions of this Act, or any regulation, license, or order issued to carry out this Act shall be subject to a civil penalty of $50,000;

(2)*(A)* any person, other than an individual, that willfully violates the provisions of this Act, or any regulation, license, or orders issued to carry out this Act shall be fined not more than $1,000,000; *and*

(B) any person, other than an individual that knowingly violates the provisions of this Act, or any regulation, license, or order issued to carry out this Act shall be fined not more than $500,000; and

(3)*(A)* any individual who willfully violates the provisions of this Act or any regulation, license, or order issued to carry out this Act shall be fined not more than $50,000, or imprisoned not more than 10 years, or both; and

(B) any individual who knowingly violates the provisions of this Act, or any regulation, license, or order issued to carry out this Act shall be fined not more than $250,000, or imprisoned not more than 5 years, or both.

[(4) any individual who violates section 301(a) or any regulations issued to carry out that section shall, instead of the penalty set forth in paragraph (2), be fined not more than 5 times the value of the krugerrands or gold coins involved.]

(c)(1) Whenever a person commits a violation under subsection (b)—

(A) any officer, director, or employee of such person, or any natural person in control of such person who knowingly and willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation, and

(B) any agent of such person who knowingly and willfully carried out such act or practice,

shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

[(2) Paragraph (1) shall not apply in the case of a violation by an individual of section 301(a) of this Act or of any regulation issued to carry out that section.]

[(3)]*(2)* A fine imposed under paragraph (1) on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.

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STATE OR LOCAL ANTI-APARTHEID LAWS, ENFORCE

SEC. 606.* * *

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COORDINATOR OF SOUTH AFRICA SANCTIONS

SEC. 607. (a) There is established within the Department of State a coordinator of South Africa sanctions who shall be responsible to the Secretary of State for matters pertaining to the implementation of sanctions against South Africa, in accordance with the provisions of this subsection.

(b) The Secretary of State, through the coordinator of South Africa sanctions, shall—

(1) lead and coordinate all executive agency activities concerning monitoring of compliance with, and enforcement of, this Act;

(2) lead and coordinate monitoring by appropriate executive agencies of other countries' trade and financial flows with South Africa (including economic relations which may undermine the effects of United States sanctions);

(3) assist the Department of Commerce, the Department of the Treasury, and appropriate intelligence and other agencies in carrying out the functions of such agencies under paragraphs (1) and (2); and

(4) annually prepare and submit, on February 1 of each year after 1989, a comprehensive report to the Congress which—

(A) describes specific actions taken during the preceding year by each affected executive agency to monitor compliance with, and enforce, the provisions of this Act;

(B) describes the trade and financial flows (by commodity, activity, total volume, and value) during the preceding year between South Africa and each of its trading and finanical partners, including economic relations which may be subject to penalties under section 402;

(C) includes the information required under section 402(b)(3);

(D) describes the resources utilized by the coordinator, the Department of State, and other executive agencies in carrying out their functions under this Act in the preceding year, including an evaluation of whether such resources were adequate; and

(E) provides any recommendations of the Secretary of State for improving the effectiveness of the coordinator.

(c) In carrying out the functions under subsection (b), the coordinator shall place particular emphasis on activities related to strategically important trade in oil, coal, computers, specialized machinery and arms, and to financial credits.

INTERAGENCY COORDINATING COMMITTEE ON SOUTH AFRICA

SEC. 608. (a) There is established an Interagency Coordinating Committee on South Africa. The Committee shall coordinate and monitor implementation of this Act.

(b) The committee shall be composed of—

(1) the Secretary of State,
(2) the Secretary of the Treasury,
(3) the Secretary of Defense,
(4) the Secretary of Commerce,
(5) the Secretary of Agriculture,
(6) the Attorney General,
(7) the United States Trade Representative, and
(8) such other heads of executive agencies with functions under this Act as the President considers appropriate.
The Secretary of State shall be the chairperson of the Committee.

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THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

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PART I

Chapter 1—Policy; Development Assistance Authorizations

SEC. 101. * * *

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PART II

Chapter 4—Economic Support Fund

SEC. 531. * * *

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[SEC. 535. ECONOMIC SUPPORT FOR DISADVANTAGED SOUTH AFRICANS.—(a)(1) Up to $40,000,000, of the funds authorized to be appropriated to carry out this chapter for the fiscal year 1987 and each fiscal year thereafter shall be available for assistance for disadvantaged South Africans. Assistance under this section shall be provided for activities that are consistent with the objective of a majority of South Africans for an end to the apartheid system and the establishment of a society based on non-racial principles. Such activities may include scholarships, assistance to promote the participation of disadvantaged South Africans in trade unions and private enterprise and alternative education and community development programs.]

SEC. 535. ECONOMIC SUPPORT FOR DISADVANTAGED SOUTH AFRICANS.—(a)(1) Up to $40,000,000 of the funds authorized to be appropriated to carry out this chapter and any other economic development assistance activities under the Foreign Assistance Act of 1961, for the fiscal year 1989 and each fiscal year thereafter, shall be available for assistance for disadvantaged South Africans. Assistance under this section shall be provided for activities that are consistent with the objective of a majority of South Africans for an end to the apartheid system and the establishment of a society based on nonracial principles. Such activities may include scholarships (including scholarships for study in the health care professions and the health sciences), assistance to promote the participation of disadvantaged South Africans in trade unions and private enterprise,

alternative education and community development programs, and training and other assistance (including legal aid in challenging government media restrictions) for South African journalists.

(2) Up to $3,000,000 of the amounts provided in each fiscal year pursuant to subsection (a) shall be available for training [programs for South Africa's trade unionists.] *and other support programs (including legal assistance) for trade unions in South Africa and Namibia, including COSATU (Congress of South African Trade Unions), NACTU (National Council of Trade Unions), and NUNW (National Union of Namibian Workers), their affiliates, and other viable unions in order to develop a balanced assistance program which is representative of the trade union movement.*

(3)(A) Not less than $4,000,000 of the amounts provided for each fiscal year pursuant to this subsection shall be available for programs of refugee education and assistance for South Africans and Namibians.

(B)(i) Except as provided in clause (ii), funds provided pursuant to this paragraph—

(I) may not be used for assistance to individuals who are residing in areas under the control of or administered by the South West Africa People's Organization (hereinafter referred to as "SWAPO") or the African National Congress (hereinafter referred to as "ANC"); and

(II) may not be administered through SWAPO, the ANC, or any other group or individual affiliated with SWAPO or the ANC.

(ii) The President may waive any limitation concerning the African National Congress (ANC) under clause (i) if the President determines that the ANC has provided assurances that it does not support any form of violence against individuals who are not members of the South African military or security services actually engaged in military or paramilitary operations against the ANC or other resistance organizations or if the President determines that it is in the national security interests of the United States.

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INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1987

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TITLE I—INTELLIGENCE ACTIVITIES

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. * * *

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[RESTRICTION ON INTELLIGENCE AGENCY COOPERATION WITH SOUTH AFRICA

[SEC. 107. No agency or entity of the United States involved in intelligence activities may engage in any form of cooperation, direct or indirect, with the Government of South Africa, except activities which are reasonably designed to facilitate the collection of necessary intelligence. It is the policy of the United States that no

agency or entity of the United States involved in intelligence activities may provide any intelligence information to the Government of South Africa which pertains to a South African internal opposition group, movement, organization, or individual. Any change in such policy, or the provision of intelligence information contrary to such policy, shall be considered a significant anticipated intelligence activity for purposes of section 501 of the National Security Act of 1947.]

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ADDITIONAL VIEWS OF SENATORS HELMS, LUGAR, KASSEBAUM, BOSCHWITZ, PRESSLER, MURKOWSKI, TRIBLE, EVANS, AND McCONNELL

In 1986, we expressed differing perspectives with respect to the enactment of the Comprehensive Anti-Apartheid Act (Public Law 99-440). However, in 1988, we stand united in our opposition to S. 2756, the Anti-Apartheid Amendments of 1988.

We want to be clear from the outset: Our opposition to this bill does not stem from any sympathy for, or ambivalence toward, the discriminatory apartheid system in South Africa. We deplore that system and wish to see it ended as soon as possible.

Regardless of the position each of us took toward enactment of the 1986 legislation, we have not weakened in our ananimous commitment to the expansion of democracy for all races in South Africa and the absolute necessity for the end of immoral apartheid practices of racial separation and discrimination.

The question before us in 1988 is how best to help South Africans of all races achieve these goals. As strongly as we agree with our colleagues that apartheid must end, we do not believe that the bill before us will accomplish that purpose. Our conclusion is that the pending legislation is both unwise in substance and inappropriate in its timing.

The Senate is being asked to consider extremely significant foreign policy legislation—with far reaching consequences—in the closing days of the 100th Congress. Only 4 months remain in the term of the current President. This is not the time to undertake drastic, unilateral actions which may narrow or foreclose the options available to a new administration.

We hope our colleagues will agree that the new President, whoever he may be, should have sufficient latitude to set policy in this important region. It would be most unwise to hamper the next President in his opportunity to establish new direction and policies toward South Africa.

Second, the legislation is proposed at a potentially critical juncture in sensitive negotiations between South Africa, Angola, and Cuba. The implementation of U.N. Resolution 435, with respect to independence for Namibia, and the withdrawal of Cuban troops from Angola have been major foreign policy goals of three successive Presidents—Ford, Carter, and Reagan. These have been consistent, bipartisan goals.

It appears that sensitive negotiations to achieve these objectives may be reaching a successful climax. We are concerned that the Senate not act precipitously in a way that may sabotage these negotiations and undermine years of delicate and patient negotiations.

It is our judgment that Senate approval of the bill at this time could cause the South Africans and Cubans to harden their posi-

tions, rather than pursue an agreement which the United States has sought to mediate.

South Africa authorities could easily interpret passage of this bill as a signal that additional sanctions will be imposed, regardless of whether they follow the American diplomatic lead in pursuing a peaceful transition in southern Africa. Sanctions would serve as a disincentive for the parties to continue these negotiations in the spirit in which they have been engaged thus far.

To Cuba, additional sanctions legislation could send a signal that South Africa will be isolated and undermined. This diminishes Cuba's incentive to participate in a negotiated regional settlement and enhances their interest in pressing for military advantage.

The negotiations appear to be at an extremely delicate stage, with the prospect of success a very fragile one.

Third, the Senate has not had adequate time to assess the impact of the existing sanctions enacted in 1986. These sanctions have been in effect for less than 2 years. It is premature, at this point, to endorse another round of sanctions. Indeed, the bill would require total disengagement, including forced disinvestment of United States businesses from South Africa and a virtual ban on trade between our nations.

Based on these considerations, we believe it more prudent to postpone until next year consideration of policy modifications toward South Africa. After the election of a new President, we would be pleased to work to craft a thoughtful and responsible bipartisan policy toward South Africa. Such a policy may or may not require additional legislation.

In addition to the problem of inappropriate timing, we believe the substance of the proposed bill is unwise and ill-considered.

The bill calls for a total disruption of American business activity in South Africa by requiring disinvestment by United States companies doing business in South Africa.

The irony here is that U.S. companies have been in the vanguard of progressive social change, compassionate industrial relations, promoting constructive race relations, and providing opportunities for black economic advancement.

Ultimately, economic development and apartheid are incompatible. Last year, Secretary Shultz pointed out the necessity of encouraging black economic progress:

> The architects of apartheid had to concede long ago that they could not build a modern economic powerhouse—or even sustain significant growth—without the participation of ever-increasing numbers of skilled and educated blacks
> * * *
>
> A strong and growing South African economy is a powerful force for change * * * Blacks are moving into managerial positions in major industries. American corporations, often maligned for even being in South Africa, can be proud of being in the forefront of the forces for change. Blacks are seeking to start their own businesses in record numbers, a sign of confidence in their country's future even as their own activities contribute to its transformation. The future of South Africa's economy depends on the

success of black labor and management. Without them, the growth that is needed to overcome the country's social and economic injustices will not be possible. But with the full and free participation of skilled and educated black workers and businessmen, the future of South Africa's economy can be bright indeed.

Similarly, the near total ban on imports from South Africa, proposed by the bill, has grave potential to harm the very people—black South Africans—we all want to help.

In summary, what is essentially wrong with the committee bill is that it goes much beyond attempting to provide constructive inducements for change to the Government of South Africa—which was the predominant focus and intent of the 1986 legislation. Instead it strikes at the heart of the free enterprise system and the private sector in South Africa—the very elements which have, in most respects, been a force for good.

Foreign and indigenous companies which would buy out American companies forced to divest by the bill will not observe the same fair labor practices as conscientiously as have U.S. companies. They do not provide housing, education, health, and legal aid to employees. They would likely buy these assets at a fraction of their true value since the time period for disinvestment would create a "buyer's market" in which U.S. owners would be at a distant disadvantage.

Fundamentally, we are unable to discern how enactment of these sanctions against the economy of South Africa could have any beneficial effect in promoting the end of apartheid.

On the contrary, we are concerned that the economic contraction and isolation that would result would make matters worse—by impoverishing black South Africans, deepening their despair, and hardening the resistance of many white South Africans.

Moreover, by turning our backs on South Africa, the United States would reduce the opportunity to influence events there. We do not believe this is a desireable outcome. It should be remembered that ending apartheid is only the beginning, not the end, to the desired change in South Africa. We believe that post-apartheid South Africa will be shaped very much by the process and dynamics that end apartheid. Sensible, effective measures may contribute to a rapid and peaceful evolution of South Africa into a democratic, free society in which the rights of all its citizens are fully protected and in which all races live in harmony and justice. Ineffective and ill-considered legislation, on the other hand, could contribute to an increase in violence, bloodshed, human misery, and injustice in that society. It is, therefore, important that we consider carefully the effects of this or other legislation on the process leading to the abolition of apartheid.

The United States should work with our allies to develop a multinational response to South Africa, but certainly we should not induce a global trade war, complete with retaliatory measures, as the bill contemplates.

Retaliation is specifically called for in section 202 of the bill. If the President finds that an industrialized democracy is not adequately enforcing anti-apartheid agreements, then he may pro-

scribe the importation of products from those countries. The bill specifically requires that "the European Community shall be treated as being a single industrialized democracy". Thus, if a single violation takes place, the President is required to retaliate against the whole European Community.

Further, during the course of markup, the State Department confirmed that the provision, as written, even requires sanctions against South Africa's neighbors who also "take significant commercial advantage" of U.S. sanctions. In particular, Botswana, a nation heralded as a model democracy in the region, would be in jeopardy, under the terms of the committee bill.

This section of the bill also requires the President to confer with other industrialized democracies to reach cooperative agreements to impose sanctions against South Africa, and also requires him to instruct the U.S. Representative to the United Nations to seek sanctions in the United Nations against South Africa. Such mandates in the area of Executive prerogatives are clearly unconstitutional.

We strongly urge our colleagues of both parties to reject this legislation for the reasons outlined. This draconian bill should be rejected in favor of a more balanced, bipartisan one.

In opposing this legislation, we reiterate that the United States is not weakening its opposition to apartheid. Quite the contrary, our opposition is based on the poor timing of this legislation, the unconstitutional provisions in the bill, and the belief that the proposed sanctions do not serve the ends of the majority of black South Africans. Unfortunately, this bill benefits the radical elements on the extreme right and the extreme left within South Africa, not the majority whose support is necessary for non-violent, constructive change to take place.

APPENDIX

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, September 7, 1988.

Hon. CLAIBORNE PELL,
U.S. Senate, Washington, DC.

DEAR SENATOR PELL: As the Foreign Relations Committee begins its mark-up of the South Africa Sanctions bill this week, we would like to let you know of our full support for revised language concerning U.S. intelligence and military cooperation with the South African Government.

We believe that the attached language, worked out among our staffs, is in keeping with the intent of the legislation and retains an intelligence capability that is beneficial to U.S. interests in the region.

We would like to assure you that the Intelligence Committee will continue to pay close attention to this matter in its oversight responsibilities to ensure that the intelligence community adheres to both the spirit and letter of existing law and to this provision when enacted.

With best regards,
Sincerely,

DAVID L. BOREN,
Chairman.
WILLIAM S. COHEN,
Vice Chairman.

PROPOSED REVISION TO S. 2378

SEC. 5 PROHIBITION ON UNITED STATES INTELLIGENCE AND MILITARY COOPERATION WITH SOUTH AFRICA

SEC. 309. (a) No agency or entity of the United States involved in intelligence activities may engage in any form of cooperation, direct or indirect, with the Government of South Africa or the armed forces of the Government of South Africa, except activities which are reasonably designed to facilitate the collection of necessary intelligence.

(b) No agency or entity of the United States involved in intelligence activities may provide any intelligence information to the Government of South Africa which relates, directly or indirectly, to

(1) a South African opposition group, movement, organization or individual, wherever based; or

(2) political, economic, or military conditions in any Southern African country.

(c) The prohibition contained in subsection (b)(2) shall not apply to the conduct of diplomatic activities or to intelligence information concerning the military activities or equipment in southern

Africa of Cuban military forces or the military forces of another communist country acting in concert with Cuban military forces.

(d) Any anticipated change in any form of cooperation with the Government of South Africa shall be considered a significant anticipated intelligence activity for purposes of section 501 of the National Security Act of 1947.

(e) No agency or entity of the United States may provide any information to the Government of South Africa for the purpose, or which have the effect, of assisting South Africa to evade any sanctions or prohibitions imkposed by this Act.

(f) Funds authorized to be appropriated or otherwise made available by the Congress (including funds specified in a classified schedule of authorizations or appropriations) may not be obligated or expended by any agency or entity of the United States for any expenses related to any cooperation prohibited by this section.

(g) Amendment to Intelligence Authorization Act for Fiscal year 1987.—Section 107 of the Intelligence Authorization Act for Fiscal Year 1987 (Public Law 99-569) is hereby repealed.

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